

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4201

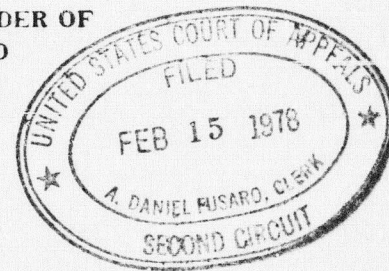
United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

BRISTOL SPRING MANUFACTURING COMPANY,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD



APPENDIX

ELLIOTT MCORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

I

I N D E X

Chronological List of Docket Entries	II
Board's Decision and Order, dated August 24, 1977.....	1
Answer to Respondent's Response to Order to Show Cause and to Respondent's Motion That Summary Judgment Be Dismissed, dated June 15, 1977.....	16
Response to order to show cause and motion that General Counsel's motion for summary judgment be dismissed, dated June 3, 1977.....	18
Order transferring proceeding to the Board and notice to show cause, dated May 23, 1977.....	25
Response to General Counsel's Motion for Summary Judgment, dated May 23, 1977.....	27
Motion for Summary Judgment and for transfer to Board for Decision, dated May 11, 1977.....	30
Exhibits attached	
#1.....	36
#2.....	37
#3.....	38
#4.....	39
#5.....	40
#6.....	44
#7.....	45
#8.....	78
#9.....	79
#10.....	80
#11.....	88
#12.....	90
#13.....	92

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Bristol Spring Mfg. Co.
Board Case No. 1-CA-12714
1-RC-14258

1.29.76 Petition filed

2.13.76 Notice of Representation Hearing, dated

2.25.76 Stipulation for Certification upon consent election dated

4. 2.76 Notice of Election to be held

4. 2.76 Tally of Ballots dated

4. 2.76 Certification on conduct of election, dated

4. 7.76 Respondent's Objections to election, dated

4.30.76 Acting Regional Director's stipulation on disposition of
Challenged Ballots dated

7.22.76 Consolidated Report on Objections and Challenged Ballots, dated

8.10.76 Respondent's Exceptions to Regional Director's Report on
Objections, received

8.10.76 Respondent's Brief in support of Exceptions, received

10. 6.76 Decision and Certification of representative, dated

2. 7.77 Charge filed

3.15.77 Complaint and Notice of hearing, issued

3.28.77 Answer to Complaint, received

4.26.77 Amendment to Complaint issued

5.11.77 Answer to amendment to Complaint dated

5.11.77 Motion for Summary Judgment and for transfer to Board for
Decision, dated

5.23.77 Response to General Counsel's Motion for Summary Judgment,
received

5.23.77 Order transferring proceeding to the Board and notice to
show cause, dated

8. 3.77 Response to order to show cause and motion that General
Counsel's motion for summary judgment be dismissed, dated

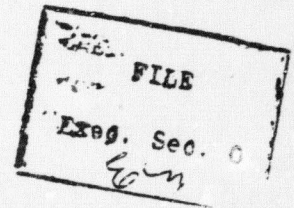
6.15.77 General Counsel's answer to Respondent's response to order
to show cause and to Respondent's motion that General Counsel's
motion for summary judgment be dismissed, dated

8.24.77 Decision and Order of the National Labor Relations Board,

231 NLRB No. 85

JPW

D-2711
Plainville, Conn.

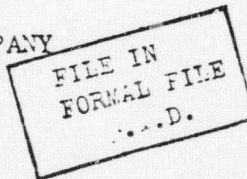


UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRISTOL SPRING MANUFACTURING COMPANY

and

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW LOCAL 1251



Case 1--CA--12714

DECISION AND ORDER

Upon a charge filed on February 7, 1977, by United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1251, herein called the Union, and duly served on Bristol Spring Manufacturing Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint and notice of hearing and amendment to complaint on March 15, 1977, and April 26, 1977, respectively, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on October 6, 1976, following a Board election in Case 1--RC--14258,

231 NLRB No. 85

D--2711

the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;^{1/} and that, commencing on or about October 12, 1976, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 28, 1977, and May 9, 1977, Respondent filed its answers to the complaint and amendment to complaint, respectively, admitting in part, and denying in part, the allegations in the complaint and the amended complaint.

On May 12, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Respondent filed a response thereto on May 23, 1977, entitled "Response to General Counsel's Motion for Summary Judgment." Also, on May 23, 1977, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause, entitled "Response to Order to Show Cause and Motion that General Counsel's Motion for Summary Judgment be Dismissed," in which it incorporated therein the matters contained in its "Response to General Counsel's Motion for Summary Judgment." Counsel for the General Counsel subsequently filed an answer thereto.

^{1/} Official notice is taken of the record in the representation proceeding, Case 1--RC--14258, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va., 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answers to the complaint and the amended complaint and response to the Notice To Show Cause, Respondent contests the validity of the Union's certification (1) on the basis of its objections in the underlying representation case, and (2) on the grounds that it has no knowledge as to whether or not an appropriate panel of the Board considered the submissions in support of its exceptions to the Acting Regional Director's report and properly executed its Decision and Certification of Representative. In his submissions, the General Counsel contends, inter alia, that Respondent is attempting to relitigate representation case matters considered and disposed of in the prior representation proceeding and this it may not do. We agree.

Review of the record herein, including that in Case 1--RC--14258, establishes that, pursuant to a Stipulation for Certification Upon Consent Election, an election was held on April 2, 1976, in which the vote was 43 to 36 with 7 determinative challenged ballots. Thereafter, Respondent filed timely objections to the election alleging Union conduct essentially as follows: (1) campaign activity designed to create the impression that the Government and the Board endorsed the Union; (2) misrepresentations; (3) financial inducements; (4) threats; and (5) creating an "atmosphere of fear." After investigation, the Acting Regional Director issued on July 22, 1976, a report entitled "Consolidated Report on Objections and Challenged Ballots" recommending that the objections be overruled

4

D--2711

and that the challenge to one ballot be sustained.^{2/} Accordingly, since the remaining six challenged ballots were no longer determinative and the Union received a majority of the valid votes cast, the Acting Regional Director recommended that a certification of representative be issued. Respondent filed with the Board detailed exceptions and a brief essentially reiterating its objections, excepting specifically to the Acting Regional Director's failure to consider the Union's payment of the Board agent's lunch as set forth in an attached affidavit, and requesting that the election be set aside, or, alternatively, that a hearing be held on its objections. After considering the Respondent's objections and determinative challenges and the report, and after reviewing the record in light of the exceptions and brief, the Board, on October 6, 1976, issued a Decision and Certification of Representative^{3/} in which it adopted the findings and recommendations of the Acting Regional Director and certified the Union, thereby necessarily finding that Respondent did not raise substantial or material issues requiring a hearing.

2/ The parties had stipulated and the Acting Regional Director found that the voter was ineligible to vote because he was a managerial employee.

3/ In its answer, Respondent contends that it has no knowledge as to whether or not an appropriate panel of the Board considered its objections, exceptions, and briefs including material not previously considered by the Acting Regional Director and whether the panel properly executed the Decision and Certification of Representative. However, the panel that decided the instant case also decided and issued the Decision and Certification of Representative in the underlying representation case and in so doing considered the entire record, including Respondent's objections, exceptions, and briefs. The signed copy of the Decision and Certification of Representative by the three panel members is to be found in the formal file of the representation case (1--RC--14258) located at the Board's Offices in Washington, D.C., and is available for inspection and copying and is not reported in printed volumes of Board decisions.

In its response to the Notice To Show Cause Respondent again contends that it is entitled to an evidentiary hearing on its objections. As indicated above, the Board's Decision and Certification of Representative necessarily found that Respondent's objections raised no issues requiring a hearing. It is well established that parties do not have an absolute right to a hearing. It is only when the moving party presents a prima facie showing of "substantial and material factual issues" which would warrant setting aside the election that it is entitled to an evidentiary hearing ^{4/} and Respondent has not made such a showing. It is clear that, absent arbitrary action, this qualified right to a hearing satisfies ^{5/} all statutory and constitutional requirements.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues ^{6/} which were or could have been litigated in a prior representation proceeding.

Except as hereafter discussed, all issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or

^{4/} N.L.R.B. v. Modine Manufacturing Company, 500 F.2d 914 (C.A. 8, 1974), enfg. 203 NLRB 527 (1973); Handy Hardware Wholesale, Inc., 222 NLRB 373 (1976); Janler Plastic Mold Corporation, 191 NLRB 162 (1971); Crest Leather Manufacturing Corporation, 167 NLRB 1085 (1967), and cases cited therein.

^{5/} Amalgamated Clothing Workers of America [Winfield Manufacturing Company, Inc.] v. N.L.R.B., 424 F.2d 818, 828 (C.A.D.C., 1970).

^{6/} See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

Respondent also contends in its response that the Acting Regional Director assigned the same Board agent, who investigated the earlier unfair labor practice charge against the Respondent in Case 1--CA--11410, to investigate the objections in the underlying representation case, contrary to normal Regional Office practice. Respondent made no showing that this Board agent's investigation of the unfair labor practice charge prejudiced his participation in the underlying representation case to the detriment of Respondent or compromised the integrity of the representation proceedings.^{7/} Furthermore, Respondent has not shown why this matter could not have been raised in the underlying representation case and, therefore, it cannot be relitigated here.^{8/}

Further, in its response Respondent contends that granting summary judgment on the issue of its failure to furnish the specific information requested by the Union is unwarranted as the complaint and its amendment, which allege the request for information, failed also to allege that it was "relevant and necessary." We find no merit in this contention. The request for this information as well as the refusal to furnish it as alleged in complaint is admitted by the Respondent's

^{7/} Osborn Transportation, Inc., 226 NLRB No. 208 (1976); Kimco Auto Products of Mississippi, Inc., 184 NLRB 599 (1970); Anax Aluminum Extrusion Products, Inc., 172 NLRB 1401 (1968).

^{8/} Pittsburgh Plate Glass v. N.L.R.B., supra, fn. 6.

answer.^{9/} The information requested by the Union herein, such as the names and job classifications of the union employees, and their wages, hours, and other current benefits, clearly constitutes information which has a direct bearing on the negotiation of wages, hours, and other terms and conditions of employment and, therefore, is relevant and necessary.^{10/} The Board has held that such information encompasses matters which are mandatory subjects of bargaining, and employers are required to provide this information to enable unions to bargain intelligently and to fulfill their obligations as the selected representatives of their employees^{11/} We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent, a corporation organized under the laws of the State of Connecticut, at all times material herein, has maintained its principal office and place of business at 123 Whiting Street, Plainville, Connecticut (herein called the Plainville plant), where it is now and continuously has been engaged in the manufacture, sale, and distribution of precision springs, wire forms, metal stampings, and related products. Respondent, in the annual course and conduct of its business operations,

^{9/} Accordingly, we find no merit in Respondent's contention in its response that the factual allegations of par. 11 of the Motion for Summary Judgment are beyond the scope of the complaint, since they are in support of the requests and refusals to bargain alleged in the complaint, which allegations were admitted by the Respondent's answers.

^{10/} N.L.R.B. v. Acme Industrial Co., 385 U.S. 432, 435--436 (1967).

^{11/} Dynamic Machine Co., 221 NLRB 1140, 1142 (1975); Irwindale Division of LAU Industries, a Division of Philips Industries, Inc., 219 NLRB 364, 366 (1975); Northwest Publications, Inc., 211 NLRB 464, 465 (1974).

8

D--2711

receives at its Plainville plant products and materials valued in excess of \$50,000 directly from points located outside the State of Connecticut. Annually, Respondent, in the course and conduct of its business operations, ships from its Plainville plant springs and related products valued in excess of \$50,000 directly to points outside the State of Connecticut.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1251, is a labor organization within the meaning of Section 2(5) of the Act

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Respondent employed at its Plainville plant, exclusive of all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act.

2. The certification

On April 2, 1976, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the

Regional Director for Region 1, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on October 6, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and
Respondent's Refusal

Commencing on or about October 12, 1976, and at all times thereafter, the Union has requested the Respondent to furnish certain relevant and necessary information for the purpose of collective bargaining,^{12/} and to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about October 12, 1976, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since October 12, 1976, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

^{12/} The Union seeks information relating to: names, ages, sex, marital status, dependents, and classifications of all unit employees; individual wage rates of pay for each unit employee; wage structure for minimums and maximums of each labor grade or classification; what fringe benefits are in effect for unit employees such as the number of paid holidays; amount of life insurance and cost; weekly indemnity for sickness and accident benefits and duration of such benefits and their cost; hospital and medical benefits; pension plan; and other related matters.

D--2711

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, furnish the Union the requested relevant and necessary information for the purpose of collective bargaining, and upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Bristol Spring Manufacturing Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1251, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of Respondent employed at its Plainville plant, exclusive of all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since October 6, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about October 12, 1976, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By refusing on or about October 12, 1976, and at all times thereafter, to provide the above-named labor organization with certain relevant and necessary

information requested by it for purposes of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, and refusal to provide relevant and necessary information for the purposes of collective bargaining, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bristol Spring Manufacturing Company, Plainville, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1251, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees of Respondent employed at its Plainville plant, exclusive of all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act.

(b) Refusing to provide the above-named labor organization with the relevant and necessary information requested by it for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide the above-named labor organization with the relevant and necessary information requested by it for the purpose of collective bargaining.

(c) Post at its Plainville, Connecticut, facility copies of the attached notice marked "Appendix."^{13/} Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted.

^{13/} In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

14

D-2711

Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 24, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

15

D--2711

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1251, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the Union with the relevant and necessary information requested by it for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees of Respondent employed at its Plainville plant, exclusive of all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act.

WE WILL, upon request, provide the above-named labor organization with relevant and necessary information requested by it for the purpose of collective bargaining.

BRISTOL SPRING MANUFACTURING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 12th Floor, Keystone Building, 99 High Street, Boston, Massachusetts 02110, Telephone 617--223--3313.

888

16

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of
BRISTOL SPRING MANUFACTURING COMPANY
and
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW, LOCAL 1251

FILE IN
FORMAL FILE
A...D.

CASE NO. 1-CA-12,714

ANSWER TO RESPONDENT'S REPOSE TO ORDER
TO SHOW CAUSE AND TO RESPONDENT'S MOTION
THAT GENERAL COUNSEL'S MOTION FOR SUMMARY
JUDGMENT BE DISMISSED

NOW COMES Counsel for the General Counsel and responds to the Respondent's
"Response to Order to Show Cause and Motion That General Counsel's Motion For
Summary Judgment Be Dismissed".

1. On June 10, 1977, the Respondent filed a Response to Order to Show
Cause and Motion That General Counsel's Motion For Summary Judgment Be
Dismissed (hereinafter Respondent's Response and Motion) in the above-captioned
case.

2. Paragraph 1 of Respondent's Response and Motion reads as follows:

1. In Paragraph 11 of his Motion For Summary Judgment,
General Counsel sets forth factual allegations which are
beyond the scope of the Complaint...and Amended
Complaint... In these circumstances, the Board may not
properly grant a Motion For Summary Judgment.

3. It is the position of Counsel for the General Counsel that the factual
allegations set forth in Paragraph 11 of his Motion For Summary Judgment do not
go beyond the permissible scope; and furthermore that said factual allegations
merely set forth facts in support of the allegations of Paragraphs 11(a), 11(b)
and 12(a) and (b) of the Complaint, which allegations were admitted in essence
by Respondent's Answer.

4. In Paragraphs 2, 3 and 4 of Respondent's Response and Motion,
Respondent is merely attempting to relitigate the prior issues previously
determined in the representation case. The Board and Courts have consistently

held that issues which were or could have been raised and determined by the Board in a prior representation case cannot be relitigated in a subsequent unfair labor practice proceeding, absent newly discovered evidence, previously unavailable evidence, or special circumstances. Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Wentworth Institute and Wentworth College of Technology, Inc., 210 NLRB 345, enf'd 515 F2d 550 (1974).

5. In Paragraph 5 of Respondent's Response and Motion, Respondent argues that since neither the Complaint, as amended, nor the Motion For Summary Judgment, expressly allege that the information requested by the Union for bargaining is "relevant and necessary", the Motion For Summary Judgment should be denied.

6. It is the position of Counsel for the General Counsel that the information requested by the Union, set forth in Paragraph 11(a) of the Complaint, is "relevant and necessary" to the Union's function as bargaining representative on its face, according to consistent holdings of the Board and Courts. See, eg., Dynamic Machine Co., 221 NLRB 1140, 1142 (1975); Dwindale Division of Lau Industries, a Division of Philips Industries, Inc., 219 NLRB 364, 366 (1975). Moreover, the Board has held, with court approval, that wage and related information pertaining to employees in the bargaining unit is presumptively relevant; that such information is "necessary to carry out the union's duty" as bargaining representative. See Northwest Publications, Inc., 211 NLRB 464, 465 (1974), and cases cited therein. Thus, it is submitted that the Board should construe the information requested as "relevant and necessary." In any case, if the Board believes that the Complaint or Motion For Summary Judgment is defective for not expressly alleging that the information requested by the Union is "relevant and necessary" to its function as bargaining representative, then the Board should construe the Complaint and Motion For Summary Judgment amended in this regard.

7. Thus, Respondent's Motion to Dismiss should be denied, and General Counsel's Motion For Summary Judgment should be granted.

Gary H. Glaser

Gary H. Glaser, Counsel for General Counsel
National Labor Relations Board
First Region
Keystone Building - Twelfth Floor
99 High Street
Boston, Massachusetts 02110

Dated at Boston, Massachusetts
this 15th day of June, 1977.

117

18

FILE
Exec. Sec. 0
jls

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of :
BRISTOL SPRING MANUFACTURING COMPANY :
and : Case No. 1-CA-12,714
UNITED AUTOMOBILE, AEROSPACE AND :
AGRICULTURAL IMPLEMENT WORKERS OF :
AMERICA, UAW LOCAL 1251 :

RESPONSE TO ORDER TO SHOW CAUSE AND MOTION THAT
GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT BE DISMISSED

On May 20, 1977, the Associate Executive Secretary of the National Labor Relations Board issued an Order transferring the above-captioned matter to the Board and a Notice To Show Cause Why the General Counsel's Motion For Summary Judgment should not be granted. Respondent respectfully submits the following response:¹

1. In Paragraph 11 of his Motion, General Counsel sets forth factual allegations which are beyond the scope of the Complaint (Exhibit 15)² and Amended Complaint (Exhibit 16). In these circumstances, the Board may not properly grant a Motion For Summary Judgment.

¹ In view of this Order, Respondent withdraws its response to General Counsel's Motion For Summary Judgment which was submitted to the Board on May 20, 1977 and will incorporate matters contained therein in this Motion.

² Exhibit refers to Exhibits in General Counsel's Motion

2. In its Objections (Exhibit 5), Respondent contends that employees were given the impression that the National Labor Relations Board had endorsed the Petitioner.

Prior to the election, a Board Agent (See Attachment 1) was assigned the investigation of pending unfair labor practice charges. At a time shortly before the election, the Board Agent, without knowledge of the Respondent, shared in minor gratuities offered by the Petitioner to employees (See Affidavit of employee Markie, Exhibit 10). In return for attendance at that and other Union sponsored meetings, employees, as the Acting Regional Director found in his Report on Objections (Exhibit 7), received payment from the Petitioner. The Board Agent also made remarks (Affidavit of Markie) that indicated to Markie that the National Labor Relations Board was in opposition to Respondent.

Although the Board in several cases has recommended that Board Agents involved in unfair labor practice investigations not be assigned representation matters (See Kimco Auto Products of Mississippi Inc., 184 NLRB No. 60, 74 LRRM 1508; Amax Aluminum Extrusion Products Inc., 172 NLRB No. 149, 68 LRRM 1506), the Regional Director assigned the same Agent (Attachment 2) to investigate Respondent's Objections. Based upon this investigation, the Acting Regional Director, without an opportunity for hearing, issued his Report on Objections (Exhibit 7) dismissing the Objections in their entirety.

In its request for Review, Respondent submitted evidence (Affidavit of Markie - Exhibit 10) to the Board of the Board Agent's conduct.

Respondent for these reasons, as well as other contentions raised in its Request for Review, maintains that the Board could not properly certify the Petitioner. It is a

fundamental lack of fairness for an Agent, allegedly a participant in conduct which the Board has previously deplored (See Athbro Precision Engineering Corp., 166 NLRB No. 116, revised 57 LC ¶ 12, 440 (D.C.R.C., 1967), mod. 171 NLRB No. 4), and who has allegedly demonstrated to employees his attitude toward Respondent, to make a determination and recommendation on Respondent's Objections, and effectuate denial of Respondent's Request for Hearing.

3. In its Answer to Complaint (Exhibit 17), Respondent raised the issue of whether the Board had properly considered all evidence in the Request For Review and issued a proper form of certification. Presumptively, if an appropriate original copy of the Board's decision exists, it could easily be obtained by the General Counsel. However, the General Counsel has made no effort to do so, even by proposed Stipulation, and thus has not provided appropriate documentary evidence on which the Board can grant its Motion.

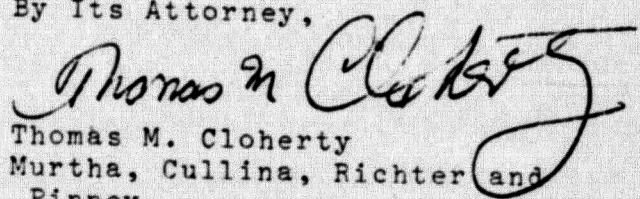
4. For the reasons set forth above, and for the reasons previously advanced to the Board in Exhibit 10, the Board could not properly certify the Petitioner, and thus, no refusal to bargain can exist.

5. In order to find an 8(a)(5) violation for refusal to provide information, the Board must find that the information requested was relevant and necessary for the Petitioner to function as a collective bargaining representative (See Timken Roller Bearing Co. v. NLRB, 325 F2nd 746, (6th Cir., 1963), 48 LC ¶ 18, 656; cert. denied 49 LC ¶ 18, 851 (1964). The Complaint, (Exhibit 15), and the Amended Complaint (Exhibit 16), do not allege that any information sought by the Union is relevant and necessary. General Counsel has made no such contention in his Motion. Thus, the Board can not properly grant the Motion for Summary Judgment in this respect.

6. Thus, Respondent prays that the General Counsel's Motion for Summary Judgment be denied.

THE BRISTOL SPRING MANUFACTURING
COMPANY

By Its Attorney,


Thomas M. Cloherty
Murtha, Cullina, Richter and
Pinney
P. O. Box 3197 - 101 Pearl Street
Hartford, Connecticut 06103

Dated: June 3, 1977

22

CERTIFICATE OF SERVICE

This is to certify that copies of the attached Response to Order to Show Cause and Motion that General Counsel's Motion for Summary Judgment Be Dismissed have been served upon the following parties by pre-paid certified mail:

Gary H. Glaser, Counsel for the General Counsel
National Labor Relations Board
First Region
Keystone Building, Twelfth Floor
99 High Street
Boston, Massachusetts 02110

Anthony Bracha
International Union, United Automobile, Aerospace & Agricultural
Implement Workers of America - UAW
8 Ellsworth Road
West Hartford, Connecticut 06107

Martha Dziadul
Martha Dziadul

Dated: June 3, 1977

23



NATIONAL LABOR RELATIONS BOARD

REGION 1

Bullfinch Building, 15 New Chardon Street

Boston, Massachusetts 02114

Telephone (617) 223-3000

Bristol Spring Mfg. Co.
123 Whiting Street
Plainville, Ct. 06062

February 5, 1976

Attn: Ben Hittleman, Pres.

Re: Bristol Spring Mfg. Co.
Case No. 1-CA-11,410

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB-4541, pertaining to our investigative and voluntary procedures.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the Courts, see Form NLRB-4541.

You are requested to submit promptly a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge. All communications and submissions should be made to the Board Agent indicated below.

This case has been assigned to Joseph L. Kane, Examiner (Telephone No. 223-4550) for investigation. During the course of the investigation should the aforesaid agent be in the field or otherwise unavailable when you attempt to communicate, please contact his (her) supervisor, Joseph C. Barry (Telephone No. 223-3350).

Your cooperation with this office is invited so that all facts of the case may be considered.

Very truly yours,

Robert S. Fuchs
Robert S. Fuchs
Regional Director

Registered No. 614134
Return Receipt Requested

Encl: Charge and Forms
NLRB-4541, 4813 and 4701

24

ATTACHMENT 2

June 20, 1976

Mr. Joseph Mac
Patton, Member, Customs Board
2001 1st Street
N.W.
Washington, D.C. 20036

For Bristol Syring Manufacturing Company
and HAW: Case No. 1-76-31,253

Dear Mr. Mac:

Enclosed is a proposed Stipulation with respect to the
challenged patents in the above captioned matter.

Very truly yours,

Thomas M. Cloherty

Enclosure

25

Plainville, Conn.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPRING MANUFACTURING COMPANY

and

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW LOCAL 1251

FILE IN
FORMAL FILE
U.A.W.

Case 1-CA-12714

OFFER TRANSFERRING PROCEEDING TO THE BOARD
and
COUNCIL TO SHOW CAUSE

On March 15, 1977, the Regional Director for Region 1 of the National Labor Relations Board issued a Complaint and Notice of Hearing, and on April 26, 1977, respondent's Complaint, in the above-entitled proceeding, alleging that the Respondent was engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed answers admitting in part, and denying in part the allegations of the Complaint, as amended, and submitting defenses.

Thereafter, on May 12, 1977, the General Counsel, by counsel, filed with the Board in Washington, D.C., a Motion for Summary Judgment and for Transfer to Board for Decision, with exhibits attached. The General Counsel, submits, in effect that the Respondent, in its answer is attempting to relitigate issues raised and determined by the Board in the prior representation Case 1-RC-142-8. He, therefore, moves: (a) that the Board find that a majority of the employees in the appropriate unit by a valid secret ballot election conducted under the supervision of the Regional Director designated or selected the Union as their representative for the purposes of collective bargaining and that at all times since the said election on April 2, 1976, the Union has been the exclusive representative for the purposes of collective bargaining of a majority of the employees in the said unit; (b) that on or about October 12, 1976, and at all material times thereafter, Respondent did fail and refuse, and continues to fail and refuse to furnish to the Union information requested for bargaining;

26

that on or about November 22, 1976 and at all material times thereafter, Respondent did fail and refuse, and continues to fail and refuse to bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit; (2) that all material allegations in the complaint, as amended be found to be true; (3) that Respondent be found by the Board to have violated Sections 8(a)(1) and (5) of the Act without the taking of evidence in support of the allegations of the complaint and (4) that this Motion be ruled upon as expeditiously as possible so that in the event the Motion is granted, the necessity for hearing will be obviated.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above-captioned proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D.C., and that the hearing scheduled herein for May 16, 1977, be, and it hereby is, postponed indefinitely.

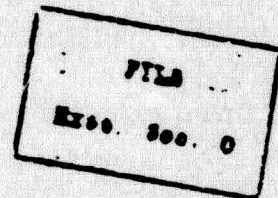
NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C. on or before June 6, 1977 with affidavit of service on the parties to this proceeding why the General Counsel's Motion for Summary Judgment should not be granted.

Dated, Washington, D.C. May 23, 1977.

By direction of the Board:

George A. Lent

Associate Executive Secretary



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of	:
	:
BRISTOL SPRING MANUFACTURING COMPANY	:
	:
and	: Case No. 1-CA-12, 714
	:
UNITED AUTOMOBILE, AEROSPACE AND	:
AGRICULTURAL IMPLEMENT WORKERS OF	:
AMERICA, UAW LOCAL 1251	:

RESPONSE TO GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

On May 11, 1977, Counsel for General Counsel filed a Motion for Summary Judgment with the National Labor Relations Board. Respondent moves that the Motion not be granted for the following reasons:

1. In Paragraph 11 of his Motion, Counsel for the General Counsel sets forth factual allegations which are beyond the scope of the complaint.
2. In Paragraph 14 of his Motion, Counsel for the General Counsel correctly sets forth Respondent's answer to Paragraph 9(b) of the complaint.
3. In order to find, as Counsel for the General Counsel requests, that all material allegations of the complaint are true, the Board will be required to make a finding of facts based upon evidence beyond the scope of the complaint. Such

28

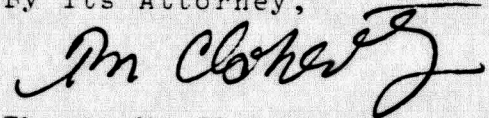
a finding may not be made through a summary judgment proceeding.

4. Respondent should be given an opportunity to present facts demonstrating that the Regional Director should have ordered a hearing on the Objections to the Election.

5. Thus, Respondent prays the General Counsel's Motion for Summary Judgment be denied.

THE BRISTOL SPRING MANUFACTURING
COMPANY

By Its Attorney,



Thomas M. Cloherty
Murtha, Cullina, Richter and
Pinney
P. O. Box 3197 - 101 Pearl Street
Hartford, Connecticut 06103

29

CERTIFICATE OF SERVICE

This is to certify that copies of the attached Response to General Counsel's Motion For Summary Judgment have been served upon the following parties:

Gary H. Glaser, Counsel for the General Counsel
National Labor Relations Board
First Region
Keystone Building, Twelfth Floor
99 High Street
Boston, Massachusetts 02110

Anthony Bracha
International Union, United Automobile, Aerospace &
Agricultural Implement Workers of America - UAW
8 Ellsworth Road
West Hartford, Connecticut 06107

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of
BRISTOL SPRING MANUFACTURING COMPANY
and
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW LOCAL 1251

CASE NO. 1-CA-12,714

MOTION FOR SUMMARY JUDGMENT
AND FOR TRANSFER TO BOARD FOR DECISION

NOW COMES Gary H. Glaser, Counsel for the General Counsel in the above-entitled matter and, pursuant to Section 102.24 of the Board's Rules and Regulations, Series 8, as amended, files this Motion for Summary Judgment and in support of said Motion states the following:

1. On January 29, 1976, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (hereinafter called the Union) filed a Petition in Case No. 1-RC-14,258 to represent certain employees of Bristol Spring Manufacturing Company (hereinafter called the Respondent). A copy of said Petition is attached hereto and marked Exhibit 1.

2. On February 25, 1976, and on March 1, 1976, respectively, the Respondent and the Union executed a Stipulation for Certification Upon Consent Election in Case No. 1-RC-14,258. The unit contained in said Stipulation stipulated to be an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act, as amended, (hereinafter referred to as the Act), is as follows:

"All production and maintenance employees employed at the Employer's Whiting Street, Plainville, Connecticut location, but excluding all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act."

A copy of said Stipulation for Certification Upon Consent Election is attached hereto and marked Exhibit 2.

3. Thereafter, on April 2, 1976, the employees of Respondent in the unit described in Paragraph 2 above, by secret ballot election conducted under the supervision of the Regional Director for the First Region, acting as an agent of the Board, voted to determine whether the Union was to be selected as their representative for the purpose of collective bargaining with Respondent. A copy of the Tally of Ballots cast at said election showing 43 votes cast for the Union and 36 votes cast against the Union, with 7 challenged ballots, is attached hereto and marked Exhibit 3. Challenged ballots were determinative of the results of the election. A copy of the Certification on Conduct of Election is attached hereto and marked Exhibit 4.

4. On April 8, 1976, Respondent filed timely Objections to Election. A copy of said Objections to Election is attached hereto and marked Exhibit 5.

5. On July 22, 1976, the Acting Regional Director issued a Consolidated Report on Objections and Challenged Ballots recommending: (a). That the Respondent's Objections be overruled in their entirety; (b). That the challenge to the ballot of one Gary Malino be sustained (approving the stipulation of the parties)^{1/}; and (c). Since the remaining challenged ballots no longer affect the results of the election, that, as the Union received a majority of the valid votes counted, a Certification of Representative be issued. A copy of said Consolidated Report on Objections and Challenged Ballots with Affidavit of Service appended, is attached hereto and marked Exhibit 7.

6. On July 29, 1976, the Respondent requested an extension of time for filing Exceptions to the Consolidated Report on Objections and Challenged Ballots. A copy of the telegram requesting said extension is attached hereto and marked Exhibit 8.

7. On August 2, 1976, the date for receipt of Exceptions to the Consolidated Report on Objections and Challenged Ballots was extended by the Board to August 9, 1976. A copy of the teletype granting said extension is attached hereto and marked Exhibit 9.

^{1/} A copy of the two documents evidencing the parties' stipulation as to Malino's ineligibility is attached hereto and marked Exhibit 6.

8. On August 7, 1976, the Respondent forwarded to the Board Employer's Exceptions to Regional Director's Report on Objections, a Brief in support thereof, and attachments for submission to the Board. A copy of said documents is attached hereto and is marked Exhibit 10.

9. On October 6, 1976, a three-member panel of the Board issued a Decision and Certification of Representative which adopted the findings and recommendations of the Acting Regional Director's Consolidated Report on Objections and Challenged Ballots and certified the Union as the exclusive bargaining representative of the employees of Respondent in the appropriate unit described above in Paragraph 2. A copy of said Decision and Certification of Representative is attached hereto and marked Exhibit 11.

10. At all times since October 6, 1976, and continuing to date, the Union has been the representative for purposes of collective bargaining of the employees in the unit described above in Paragraph 2 and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive bargaining representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

11. The Union, by letter dated October 12, 1976, signed by its agent Anthony DeLorenzo, requested the Respondent to furnish certain information for bargaining. A copy of said letter, dated October 12, 1976, is attached hereto and marked Exhibit 12. The Union received no response to said October 12, 1976 letter. The Union, by certified letter dated November 22, 1976, signed by its agent, Anthony Gerace, addressed to Respondent's President; and on or about January 24, 1977 by telephone conversation with Respondent's attorney, Thomas M. Cloherty; requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive representative of all the employees of Respondent in the unit described above in Paragraph 2. A copy of the Union's November 22, 1976 letter with return receipt cards appended are attached hereto and marked Exhibit 13.

The Union received no response to its November 22, 1976 letter or to its January 24, 1977 telephone request.

12. On February 7, 1977, the Union filed the Charge in Case No. 1-CA-12,714, alleging that Respondent had refused to provide requested information for bargaining and had refused to bargain with the Union. A copy of said Charge with Affidavit of Service appended is attached hereto and marked Exhibit 14.

13. On March 15, 1977, the Regional Director for the First Region issued a Complaint and Notice of Hearing in this matter alleging that Respondent had failed and refused to bargain with the Union, and had failed and refused to furnish to the Union information requested for bargaining, in violation of Sections 8(a)(1) and (5) of the Act. A copy of said Complaint and Notice of Hearing with Affidavit of Service appended is attached hereto and marked Exhibit 15. An Amendment to Complaint was issued on April 26, 1977. A copy of said Amendment to Complaint with Affidavit of Service appended is attached hereto and marked Exhibit 16.

14. On March 28, 1977, Respondent filed its Answer to the aforementioned Complaint, and on May 9, 1977, Respondent filed its Answer to the aforementioned Amendment to Complaint, admitting the allegations set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9(a), 11(a) and (b), and 12 to the extent that Respondent has not provided the information requested by the Union on October 12, 1976, and Respondent has not met and bargained with the Union. Respondent denied the allegations set forth in Paragraphs 10, 13, 14, and 15. In his answer to Paragraph 9(b), Respondent alleges the following as a defense:

"Paragraph 9B - Respondent has received a copy of an unsigned document attached hereto as Attachment A, but has no knowledge whether an appropriate panel of the National Labor Relations Board considered the objections, exceptions and brief including materials not previously considered by the Acting Regional Director and whether members of an appropriate panel of the National Labor Relations Board properly executed any original of Attachment A."

Attachment A to which Respondent refers in his answer is a copy of the Board's Decision and Certification of Representative. In addition, in his answer to Paragraph 12, wherein Respondent admits that it has not provided the information requested by the Union and that it has not met and bargained with the Union,

Respondent raises the defense that: "The Union has not properly been certified as the collective bargaining representative of employees." A copy of said Answer to the Complaint, and Answer to the Amendment to the Complaint, with Attachment appended, is attached hereto and marked Exhibit 17.

15. Respondent in its Answer does not deny the pertinent factual allegations of the Complaint, as amended, and therefore, under Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, these allegations shall be deemed to be admitted as true. Respondent's denial as to Paragraphs 10, 13, 14, and 15, and its denial and/or defense as to Paragraph 9(b) and its partial denial and/or defense as to Paragraph 12 raise no issues other than those fully considered in the prior proceedings. Clearly, Respondent by its defenses demonstrates its purpose, namely, to relitigate the prior issues heretofore determined in the representation case.

16. The Board and Courts have consistently held that issues which were or could have been raised and determined by the Board in a prior representation case cannot be relitigated in a subsequent unfair labor practice proceeding, absent newly discovered evidence, previously unavailable evidence, or special circumstances. Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162; N.L.R.B. v. Certified Testing Laboratories, Inc., 387 F.2d 275 (C.A. 3), enf'g 159 NLRB 881; Lipman Motors, Inc., 187 NLRB 346, enf'd 451 F.2d 823; Porta-Kamp Manufacturing, Co., 189 NLRB 899; The Hertz Corporation, 190 NLRB 665; Wentworth Institute and Wentworth College of Technology, Inc., 210 NLRB 345, enf'd 515 F.2d 550. These cases apply where, as here, Respondent does not contend that there is newly discovered evidence since the Board's certification or evidence unavailable at the time of the representation proceedings, but contends only that the Board's determination as to the validity of the election and certification of the Union was erroneous; or contends only that, since the copy of the Board's Decision and Certification of Representative received by Respondent was not a signed copy, that Respondent has no knowledge that the Union was properly certified by the Board.

WHEREFORE, Counsel for the General Counsel respectfully moves:

A. That the Board find that a majority of the employees in the unit described above in Paragraph 2, by a valid secret ballot election conducted under

the supervision of the Regional Director for the First Region for the Board, designated or selected the Union as their representative for the purposes of collective bargaining, and that at all times since the said election on April 2, 1976 and subsequent Certification of Representative on October 6, 1976, the Union has been the exclusive representative for the purposes of collective bargaining of a majority of the employees in the said unit;

B. That on or about October 12, 1976, and at all material times thereafter, Respondent did fail and refuse, and continues to fail and refuse to furnish to the Union information requested for bargaining;

C. That on or about November 22, 1976, and at all material times thereafter, Respondent did fail and refuse, and continues to fail and refuse to bargain collectively with the Union as the exclusive representative of all its employees in the unit described above in Paragraph 2;

D. That all material allegations of the Complaint, as amended, be found to be true;

E. That Respondent be found by the Board to have violated Sections 8(a)(1) and (5) of the Act without the taking of evidence in support of the allegations of the Complaint; and

F. That this Motion be ruled upon as expeditiously as possible so that in the event the Motion is granted, the necessity for hearing will be eliminated.

Respectfully submitted,

Gary H. Glaser

Gary H. Glaser, Counsel
for the General Counsel
National Labor Relations Board
First Region
Keystone Building, Twelfth Floor
99 High Street
Boston, Massachusetts 02110

Dated at Boston, Massachusetts
this 11th day of May, 1977.

36 UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
PETITIONForm Approved
Budget Bureau No. 64-R002-14

DO NOT WRITE IN THIS SPACE

INSTRUCTIONS—Submit in original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering them accordingly.

CASE NO. 1-RC-14,258

DATE FILED
January 29, 1976

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(h)(1) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☒ RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER

Bristol Spring Mfg. Company

EMPLOYER REPRESENTATIVE TO CONTACT

Ben Hittleman, Pres.

PHONE NO. 203

747-5524

3. ADDRESSES OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)

123 Whiting Street, Plainville, Conn. 06062

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Factory

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Springs, wireforms, metal stampings

5. Unit Involved (In UC petition describe PRESENT bargaining unit and attach description of proposed certification.)

Included All full time production and maintenance employees employed in the Employer's plant located at 123 Whiting Street, Plainville, Ct. 06062

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT 90

PROPOSED (BY UC/AC)

Excluded Clerical, salesmen, confidential employees, professional employees, laboratory technicians, guards, watchmen, and supervisory employees, including assistant foremen and assistant supervisors as defined in the Act.

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

*Not applicable in RM, UC and AC

(If you have checked box RC in 1 above, check and complete EITHER item "a" or "b" whichever is applicable)

7a. ☒ Request for recognition as Bargaining Representative was made on January 26, 1976 and Employer declined recognition on or about _____ (If no reply received, so state) (Month, day, year)7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME

None

AFFILIATION

ADDRESS

DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

None

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES _____ NO _____

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ A LABOR

(Insert name)

ORGANIZATION, OF _____

(Insert address)

SINCE _____ (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 3 ABOVE (If none, so state)

NAME

AFFILIATION

ADDRESS

DATE OF CLAIM (Required only if Petition is filed by Employer)

None

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

International Union, United Automobile, Aerospace & Agricultural Implement

By Anthony Bracha Workers of America-UAW International Representative

Address 8 Ellsworth Road, West Hartford, Ct. 06107

203-521-8410

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit 1

37

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. SECRET BALLOT.—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. ELIGIBLE VOTERS.—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employee who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. POST-ELECTION AND RUN-OFF PROCEDURE.—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. RECORD.—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. COMMERCE.—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (Insert commerce facts.)

The Federal Spring Manufacturing Company is a corporation engaged at 100 Main Street, Plainville, Connecticut in the manufacture and sale of mechanical springs, wire harn and metal shrapnel. Annually the Employer manufactures and retires goods valued in excess of \$100,000 and from potato directly outside the state of Connecticut.

Exhibit 2

37A

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.— February 20, 1976

11. DATE, HOURS, AND PLACE OF ELECTION.— Friday, April 2, 1976
4:30 P.M. to 5:30 P.M.
Employee's cafeteria

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.— All production and maintenance employees employed at the Employer's Whiting Street, Plainville, Connecticut location, but excluding all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

The Bristol Spring Manufacturing
Company
(Employer)

123 Whiting Street, Plainville, CT
(Address) 06062

By /s/ Thomas M. Cloherty, 2/25/76
(Name and Title) Atty. (Date)

Recommended:

/s/ Anthony D. DaDalt 3/2/76
(Board Agent) (Date)

Date approved March 3, 1976

/s/ Robert S. Fuchs
Regional Director,
National Labor Relations Board.

Case No. 1-RC-14,258

International Union, United Automobile,
Aerospace & Agricultural Implement Workers
of America - UAW

(Name of Organization)

8 Ellsworth Rd., West Hartford, CT 06107
(Address)

By /s/ Anthony J. Bracha 3/1/76
(Name and Title) (Date)

(Name of other Organization)

(Address)

By (Name and Title) (Date)

38
UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

THE BRISTOL SPRING MANUFACTURING COMPANY

Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA - UAW

Petitioner

Date Filed

Case No. 1-RC-14,258 1-29-76

Date issued April 2, 1976

Type of Election:

(Check one:)

- ☒ Stipulation
☐ Board Direction
☐ Consent Agreement
☐ RD Direction

(If applicable
check either
or both:)

- ☐ 8(b) (7)
☐ Mail Ballot
None

Incumbent Union (Code)

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 83
2. Void ballots 5
3. Votes cast for PETITIONER 43
4. ~~Votes cast for~~
5. ~~Votes cast for~~
6. Votes cast against participating labor organization(s) 36
7. Valid votes counted (sum of 3, 4, 5, and 6) 79
8. Challenged ballots 7
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 86
10. Challenges are (~~is~~) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

PETITIONER

For the Regional Director

Mario V. Valenzuela

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYERJames M. MillerFor PETITIONERAntonio Bracho

For

For

Exhibit 3

39

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CERTIFICATION ON CONDUCT OF ELECTION

Name of employer THE BRISTOL SPRING MANUFACTURING COMPANY Case No. 1-RC-14,258

Date of election April 2, 1976 Place Plainville, Connecticut

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

WE HEREBY CERTIFY that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For EMPLOYER

For the Regional Director, Region One

Agnes Ogonsowski
Gladys Gerbinski

Mario V. Valenzuela

For PETITIONER

For

Catherine Desjardins
Theodore Hirtz

Exhibit 4

* * * * *

In the Matter of

THE BRISTOL SPRING MANUFACTURING COMPANY*

Case No. 1-RC-14,218

April 6, 1976

* * * * *

OBJECTIONS TO ELECTION

Pursuant to the National Labor Relations Board's Rules and Regulations, the Employer files the following Objections to the Election conducted April 2, 1976 in the above-captioned matter:

1. During the pre-election period, employees were given the impression of official U.S. Government and National Labor Relations Board endorsement of the Petitioner by inter alia the following conduct:

- (a) The Petitioner's use of Official NLRB documents in its campaign;
- (b) The Petitioner's references in its campaign to the NLRB and its agents;
- (c) The Petitioner's offering and granting financial benefits to employees who offered testimony to the NLRB in support of the Petitioner;

- (d) The Petitioner's utilization of materials indicating the manner in which to mark ballots;
- (e) The defacing of the Official Notice of Election.

2. The Petitioner engaged in substantial and material misrepresentations which improperly influenced the employees' freedom of choice. These misrepresentations, inter alia, included:

- (a) misstatements of wages and benefits of employees of other employers;
- (b) misstatements that employees who voluntarily left the Employer's employment were terminated;
- (c) misstatements about the legal protections for employees and their job security that the Petitioner could provide;
- (d) other misstatements calculated to interfere with the employees' freedom of choice.

3. Employees, in advance of the Election, were given financial inducements to demonstrate their support of the Petitioner.

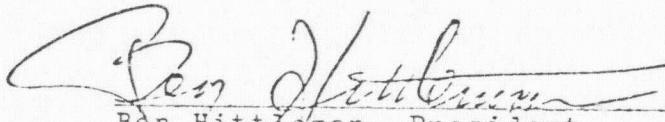
4. Employees were restrained and coerced in their freedom of choice by threats of retaliation or discharge if they did not vote for the Petitioner.

5. An atmosphere of fear, restraint and coercion existed at the time of the Election due to continued and

42

repeated allegations by the Petitioner in commenting on the Employer's response to the Petitioner's campaign.

Because of the above conditions the employees could not exercise their freedom of choice and the Employer moves that the Election be set aside.


Ben Hittelman, President

43

STATEMENT OF SERVICE

This is to certify on this date that I have served
a copy of these Objections to Election by registered mail
upon the Petitioner at the below listed address.

International Union, United Automobile Aerospace
& Agricultural Implement Workers of America - UAW
Anthony J. Bracha
8 Ellsworth Road
West Hartford, Connecticut 06107

Margaret H. Swift
Margaret H. Swift

April 7, 1976

44

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of
THE BRISTOL SPRING MANUFACTURING COMPANY
Employer
and
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW)
Petitioner
CASE NO. 1-RC-14,258

STIPULATION ON DISPOSITION OF
CHALLENGED BALLOTS

Pursuant to a Stipulation for Certification Upon Consent Election Agreement, approved by the Regional Director on March 3, 1976, an election was conducted on April 2, 1976. At the conclusion of the election, the tally of ballots showed that challenged ballots were sufficient in number to affect the results of the election.

The parties in the above captioned matter now hereby stipulate and agree that the challenge to the ballot of Gary C. Malino should be sustained on the basis that Malino's interests are more closely allied to those of management than employees properly included in the bargaining unit.

Pr. Clority
FOR THE EMPLOYER
DATE 6/30/76
FOR THE PETITIONER
DATE
REGIONAL DIRECTOR
DATE

Exhibit 6

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of
THE BRISTOL SPRING MANUFACTURING COMPANY
Employer
and
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA - UAW
Petitioner

CASE NO. 1-RC-14,258

CONSOLIDATED REPORT ON OBJECTIONS AND CHALLENGED BALLOTS

Pursuant to a Stipulation for Certification upon Consent Election approved on March 3, 1976, a secret-ballot election was conducted on April 2, 1976 among certain employees^{1/} of the Employer. The Tally of Ballots cast at said election is as follows:

Approximate number of eligible voters.....	83
Void ballots.....	0
Votes cast for Petitioner.....	43
Votes cast against participating labor organization.....	36
Valid votes counted.....	79
Challenged ballots.....	7
Valid votes counted plus challenged ballots.....	86

Timely Objections to Election were filed by the Employer on April 8, 1976, and a copy was timely served upon the Petitioner.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have conducted an investigation of the Objections, as well as of the challenged ballots, since they are determinative of the results of the election, and make this report thereon.

1/ The appropriate collective bargaining unit, as set forth in the Stipulation, is: "All production and maintenance employees employed at the Employer's Whiting Street, Plainville, Connecticut location, but excluding all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act."

BACKGROUND

The Employer is engaged in the manufacture of various springs, wire forms, and metal stampings at its sole location in Plainville, Connecticut. There has been no prior collective bargaining history involving the Employer.

THE OBJECTIONS

The Objections allege the following:

"1. During the pre-election period, employees were given the impression of official U.S. Government and National Labor Relations Board endorsement of the Petitioner by inter alia the following conduct:

- (a) The Petitioner's use of Official NLRB documents in its campaign;
- (b) The Petitioner's references in its campaign to the NLRB and its agents;
- (c) The Petitioner's offering and granting financial benefits to employees who offered testimony to the NLRB in support of the Petitioner;
- (d) The Petitioner's utilization of materials indicating the manner in which to mark ballots;
- (e) The defacing of the Official Notice of Election.

"2. The Petitioner engaged in substantial and material misrepresentations which improperly influenced the employees' freedom of choice. These misrepresentations, inter alia, included:

- (a) misstatements of wages and benefits of employees of other employers;
- (b) misstatements that employees who voluntarily left the Employer's employment were terminated;
- (c) misstatements about the legal protections for employees and their job security that the Petitioner could provide;
- (d) other misstatements calculated to interfere with the employees' freedom of choice.

"3. Employees, in advance of the Election, were given financial inducements to demonstrate their support of the Petitioner.

"4. Employees were restrained and coerced in their freedom of choice by threats of retaliation or discharge if they did not vote for the Petitioner.

"5. An atmosphere of fear, restraint and coercion existed at the time of the Election due to continued and repeated allegations by the Petitioner in commenting on the Employer's response to the Petitioner's campaign."

OBJECTION NO. 1:

With respect to this Objection, the Employer argues that all of the Petitioner's alleged conduct must be viewed in its totality.

In support of sub-paragraph (a) of this Objection, the Employer points to three specific documents, copies of which are attached as Exhibits A, B, and C. Exhibit A is a copy of the Board's Notice to Employees, Form NLRB 666, copies of which are normally furnished to employers for voluntary posting when petitions for elections are filed in regional offices. Exhibit B constitutes an official Notice of Election for an election involving the employees of a completely different employer but involving the Petitioner. With respect to this particular document, ^{2/} the Employer alleges as offensive the Petitioner's date stamp in the upper right portion of that Notice which states: "Received Oct. 24, 1973 UAW--Region 9A". Exhibit C, entitled "Union Members Make 30% More" contains a statement relative to the wages of union versus non-union ^{3/} employees. The significance of this document, asserts the Employer, is that it appears to be an official U.S. Government document because of its reference to the Bureau of Labor.

With respect to the distribution of these three documents, the Employer initially contended, and one witness presented by the Employer stated, that all three documents were received simultaneously by the

^{2/} The Employer cites the rationale of Allied Electric Products, Inc., 109 NLRB 1270.

^{3/} The Employer states that it has no knowledge of whether the material contained therein is a misrepresentation of fact.

48

employees. However, the preponderance of the testimony of other witnesses presented by the Employer indicates that these documents were not simultaneously distributed. The Petitioner's representative, Anthony J. Bracha, avers that the three documents were discussed, distributed, and/or made available to the employees at different times in the course of the campaign.

Turning to the second allegation of this Objection, sub-paragraph (b), the Employer points to various other documents published by the Petitioner in the course of the campaign. Specifically, the Employer objects to the Petitioner's letter of February 23, 1976 to the employees, which states, in part:

"But instead he [Employer President Hittleman] threatened, fired and tried to scare the workers. Well, it's not going to work, because workers are protected by U.S. Labor Laws. The Union filed Unfair Labor Practice Charges against Mr. Hittleman on behalf of the fired employees. We expect to win these cases and get all backpay and benefits lost. An Agent of the National Labor Relations Board from Boston has been here and has been getting information about the illegal discharges of workers."4/

The Employer also objects to the Petitioner's letter of March 3, 1976, wherein the Petitioner relates that it has "... filed Unfair Labor Practices against Mr. Marty Walch, who is an agent of Ben Hittleman and the Company."5/

The Employer also objects to the specific reference in the Petitioner's leaflet of March 10, 1976 (attached hereto as Exhibit D) to the guarantees "of the UAW and/or the United States Government."

Relative to sub-paragraph (c) of Objection No. 1, as distinguished from its argument set forth in Objection No. 3, the Employer asserts, essentially, that certain employees were paid by the Petitioner during the course of the campaign, that these payments became known to other employees, and that, because of the nature of the payments, the employees

4/ The Petitioner filed an unfair labor practice charge, Case No. 1-CA-11,410, on February 5, 1976 against the Employer, alleging certain violations of the Act. A complaint in that matter issued on April 6, 1976, alleging that the Employer violated Sections 8(a)(1) and (3) of the Act by, inter alia, discharging employees because of their activity on behalf of the Petitioner.
5/ The Petitioner amended the charge in Case No. 1-CA-11,410 on several occasions.

could reasonably infer that the Board supported or otherwise approved of the Petitioner's attempt to organize the employees.^{6/}

The investigation of this allegation reveals the following facts: In the course of the initial investigation of the aforementioned unfair labor practice charge against the Employer in Case No. 1-CA-11,410, the Petitioner's representatives arranged for five employees (exclusive of the two alleged discriminatees) to meet with and give testimony to the Board Agent conducting that investigation. Those interviews occurred on February 19, 1976, six weeks prior to the election. Two interviews were conducted during the particular employees' lunch break around noon-time. The remaining three interviews were conducted after those employees had finished work for the day. At the time that they agreed to come forward on behalf of the Petitioner-Charging Party, none of the employees, as far as the instant investigation revealed, had any reason to think that he or she would receive any compensation. With but one exception, the Petitioner's representative did not discuss the matter of compensation with any of the witnesses until after they had given their affidavits. Relative to the sole exception, one witness indicated, as she was giving her affidavit in Case No. 1-CA-11,410, that she should have been at her part-time employment elsewhere. At that point, the Petitioner's representative, Bracha, remarked only, "Don't worry about it." Another witness relates that, after he had given his affidavit and was leaving the place of the meeting, he remarked to Bracha that he also should have been working at his second job. Bracha remarked to the effect that the witness would get a check to make up for any inconvenience or loss from his other work. One of the noon-time witnesses was told, again after he had given his affidavit, by Bracha that he, the witness, would get some money (of an unspecified amount) "for taking his lunch hour" to testify. Nothing was said to the remaining two witnesses by the Petitioner's representative concerning compensation.

^{6/} On March 30, 1976, the Employer filed an unfair labor practice charge against the Petitioner, Case No. 1-CB-3248, alleging that these payments and the Petitioner's conduct described in Objection No. 4, below, violated Section 8(b)(1)(A) of the Act. The Regional Director dismissed that charge in its entirety on May 3, 1976. The Employer appealed the dismissal of that charge to the General Counsel who, on June 14, 1976, affirmed the dismissal.

50

Generally, each of the above-mentioned witnesses spent about one hour in giving his or her affidavit. Subsequently, all five witnesses were sent checks in the amount of \$5.00 by the Petitioner. No employee-witness testified that the payment of compensation was in any way dependent upon how he or she voted or on the outcome of the election.

On March 1, 1976, the Petitioner amended its original charge in Case No. 1-CA-11,410, setting forth an additional allegation. The Petitioner arranged for the production of four employee-witnesses to present testimony after their normal working hours on March 3, 1976 in support of that additional allegation. Due to a confusion about the date of that meeting, the Board Agent was not present to take those affidavits. Instead, all four witnesses prepared statements for Petitioner's Representative Bracha, which were later mailed to the Board's Regional Office.

Two of these four witnesses were among those who had given earlier affidavits to the Board Agent on February 19, 1976. By March 3, those two employees had already received from the Petitioner a check in the amount of \$5.00. It is their testimony that on this second occasion nothing was said to them by the Petitioner's representative relative to compensation. One of these two witnesses had a part-time job at which she should have been working when she appeared to give an affidavit on March 3. The third witness had not earlier given testimony but related that at no time did the Petitioner's representative refer to possible compensation, and that she, therefore, had no knowledge that she would be compensated. That particular witness also could have been earning additional wages by working elsewhere during the time she was giving her statement. The fourth witness similarly had not given testimony earlier. That witness states that she was requested to come forward as a witness by another employee-witness, who made no remark about compensation. After this particular employee-witness had completed her statement, Petitioner's Representative Bracha remarked "something about paying us for overtime and said it would probably be around five dollars or 'something like that'." It is further alleged by the witness that Bracha additionally promised that the witnesses could have anything from the local diner, for which the Petitioner would pay.

51

It appears that on this occasion the witnesses spent between one and two hours furnishing their statements to the Petitioner's representative. Again, there is no evidence that the Petitioner's representative at any time conditioned compensation to these employee-witnesses on either their vote or the outcome of the election.

The evidence reveals that, two days later, the Petitioner mailed checks to all four of the above employees. Unlike the first instance of compensation to witnesses, the individual checks to the four employees were all in the amount of \$20.00.

With respect to the foregoing facts, the Employer makes two contentions. The first is that this conduct caused the employees to believe that the Board supported or approved of the Petitioner's attempt to organize the Employer's employees. The second contention, discussed in Objection No. 3 below, is that the payment of these monies constituted a "bribe" which the Board should not countenance.

Relative to the first contention, the Employer presents evidence that employees other than those directly involved in the matter also knew of the payments by the Petitioner. One employee relates that he was approached by one of the alleged discriminatees, Powers, who attempted to induce the witness to meet with the Petitioner for the purpose of giving a statement relative to the Employer's alleged unfair labor practices. During the course of that conversation, Powers allegedly remarked: "It will be worth your while." The employee declined to appear as a witness.

That same employee asserts that, prior to the election, he was informed by one of the four witnesses involved in the March 3 meeting that she had received \$20.00 as a result of her attendance at that meeting.

A second witness relates that he was aware, "through the grapevine", that one of the February 19 witnesses had received \$5.00 from the Petitioner.

With respect to sub-paragraph (c) of Objection No. 1, the Employer submits for consideration the Petitioner's letters or leaflets dated March 19, March 18, and March 22, 1976, attached hereto as Exhibits D, E, and F, respectively. All three documents contain instructions to the electorate to "vote yes" and then depict a marked voting box next to or

under the word "yes". While none of these documents contains actual reproductions of the ballot, two of the documents do contain earlier references to the U.S. Government. It is therefore argued by the Employer that there is implied an imprimatur by the U.S. Government and/or the Board on the selection by the employees of the Petitioner as their collective bargaining representative.

Finally, in the matter of Objection No. 1, the Employer asserts, in sub-paragraph (e), that the Government's implied approval is furthered by frequent defacing of the official Notice of Election just prior to the election by a person or persons unknown. In this connection, the Employer submits copies of the official Notice which contain or had contained (prior to erasure) "X" marks in the "Yes" square. The Employer's Vice President, Edward Hittleman, states that at least two of the three official Notices which the Employer had posted were frequently marked in the manner above prior to the election despite the Employer's replacement of the Notice(s) and/or erasure of the markings. Other witnesses interviewed essentially support the Employer's contention that Notices contained marks in the "Yes" square.

The Petitioner denies any participation in or condonation of the marking of these Notices. No evidence contrary to that assertion has been presented.

On the basis of the conduct alleged in sub-paragraphs 1(a) through 1(e), the Employer contends that the employees were led to believe that the U.S. Government and/or the Board endorsed the selection of the Petitioner as the collective bargaining representative of the Employer's employees.

After careful consideration of the Employer's contentions and evidence, I conclude that no contention relied on by the Employer, either singly or in conjunction with the others, could reasonably be assumed to have caused voters to conclude either that the U.S. Government or the Board endorsed or favored the selection of the Petitioner by the employees.

Relative to Exhibit A, unlike the situation in Rebmar, Inc., 173 NLRB 1434, the instant notice contains no extraneous material added by the Petitioner; nor, apparently, was it made to appear as a portion of the Petitioner's other propaganda. While Exhibit B, the sample Notice of Election for employees of another employer, was "altered" by the Petitioner's date stamp, that alteration does not consist of a marking of a box. Moreover, because the document in question on its face does not pertain to the instant employees, it can reasonably be assumed not to have had significance to the employees in this voting unit. Exhibit C makes no pretense of being an official government publication.

With respect to the factual situation in sub-paragraph (b) of this Objection, I fail to see in the documents cited by the Employer any statement that could reasonably be viewed as having misled employees in the fashion asserted by the Employer. The messages contained in those documents set forth only the Petitioner's version as to the facts or legal matters and were capable of evaluation as such by the employees. Indiana Rock Wool Division Susquehanna Corp., 201 NLRB 137.

With respect to the payment by the Petitioner to certain employee-witnesses, there is no evidence that employees, including those who received the payments, had reason to believe that the Board either condoned, ratified, or sponsored these payments.

With respect to the voting boxes in Exhibits D, E, and F, the Board has consistently determined that such depictions are clearly outside the rule set forth in Allied Electric, supra, absent other material which would cause the employees to view those leaflets as official government publications or to conclude that the U.S. Government or the Board endorses a particular choice on the ballot. Phelps-Dodge Copper Products Corporation, 111 NLRB 950, 951; Rett Electronics, Inc., 169 NLRB 1111; AMF Beaird, Inc., 177 NLRB 599, 605; Stedman Wholesale Distributors, Inc., A Division of Malone & Hyde, Inc., 203 NLRB 302. All of the proffered documents are clearly identified as partisan propaganda.

Finally, with respect to the marking of the sample ballot, while such conduct cannot be condoned, there is no evidence that the Petitioner was responsible for or even knew of the defacement of the Notices. Under

similar circumstances, the Board has found that such defacement of a posted notice of election cannot reasonably be construed as creating the impression of government endorsement of one party or the other in an election and does not warrant setting aside an election. F. H. Snow Canning Company, Inc., 119 NLRB 717, 718-719; Murray Chair Company, Inc., 117 NLRB 1385; Lloyd A. Fry Roofing Company, 108 NLRB 1297. See also Kenyon-Peck, Inc., 121 NLRB 780; Bush Hog, Inc. v. National Labor Relations Board, 420 F. 2d 1266 (C.A. 5, 1969).

Accordingly, as I find no merit to any portion of Objection No. 1 or to all of the elements thereof taken together, I recommend that it be overruled in its entirety.

OBJECTION NO. 2:

Herein the Employer alleges in sub-paragraphs (a) through (d) that the Petitioner misrepresented material facts which improperly influenced the employees' freedom of choice.

Relative to sub-paragraph (a), the alleged misrepresentation of the wages and benefits of employees represented elsewhere by the Petitioner, a witness presented by the Employer states that, at the first meeting held by the Petitioner which he attended, the Petitioner referred to another local employer and allegedly asserted that the "average employee there makes \$6.08 per hour." The witness goes on to state that such a claim "could possibly be accurate but everyone was forgetting that the contract had been going on for 30 years," and that the other employer was engaged in a different industry. The witness, moreover, acknowledges that the Petitioner's representative did not "promise" a similar wage scale to the instant employees. Another witness essentially confirms the above allegation.

Petitioner's Representative Bracha denies that he related at any meeting that the average hourly earnings of the employees at the other local plant were in excess of \$6.00.^{7/} Bracha does admit that he might have informed the employees that the "average UAW" earnings exceeded

^{7/} Bracha does relate that the President of the local affiliate of the Petitioner which represents the employees at the referenced plant attended a meeting and may have made such a statement.

\$6.00 per hour. Nevertheless, the Petitioner presents evidence to establish that the average hourly wage rate of those employees of the referenced plant is \$6.09, excluding overtime and premium payments. Moreover, the Employer did not submit any evidence that the Petitioner's representation, even if made as alleged, is in fact false.

Again, it appears from the statement of the Employer's witness that the reference to the average hourly wage rate of the referenced plant, if made at all, occurred as early as January 23, 1976, and in any event no later than March 15, 1976. As the election was not conducted until April 2, 1976, I find that the Employer had ample time to rebut the alleged misrepresentation. Thus, I recommend that this allegation does not warrant setting aside the election. Modine Manufacturing Company, 203 NLRB 527.

It is further alleged, in sub-paragraph (b) of Objection No. 2, that the Petitioner misrepresented that certain former employees were involuntarily terminated by the Employer, when in fact those employees had voluntarily discontinued their employment. The Employer specifically refers to the Petitioner's leaflet dated March 30, 1976. The leaflet first quotes from three letters sent to the Petitioner by former co-workers and then asks: "Remember the letter that the Company sent you a while back when they bragged that they had never laid off anyone? What ever happened to ????????" Thereafter, the names of several former employees are set forth. The leaflet then continues: "Think about all the friends that at one time worked with you but are no longer there. Did they quit?? Did they get fired??"

The Employer protests that this leaflet led the employees to believe that all 19 of the named former employees were involuntarily terminated, whereas only eight of that number were so terminated. As the Employer assertedly did not have sufficient time in which to respond to this alleged misrepresentation, it argues that the election should be set aside.

I have carefully considered the document in question and conclude that it does not warrant setting aside the election. The leaflet does not set forth an unequivocal claim that the named individuals were

involuntarily separated from their employment. Moreover, the questions posed by the Petitioner imply that perhaps some of the named individuals did voluntarily terminate their own employment. Thus, it is highly debatable whether the Petitioner did in fact set forth a misrepresentation in any form. Moreover, even if the Employer's argument that misrepresentations exist in that portion of the leaflet were valid, I would not recommend that the election be set aside since the alleged misrepresentation was not so flagrant or so substantial as to impair the integrity of the election. Modine Manufacturing Company, supra. Further, these statements were capable of independent evaluation by the employees. Indiana Rock Wool Division Susquehanna Corp., supra.

In the next allegation, that of sub-paragraph (c), the Employer contends that the Petitioner misled the employees to believe that selection of the Petitioner as the collective bargaining representative guaranteed job protection to the employees. The Employer asserts that throughout the campaign the Petitioner's representative in effect informed the employees that the Employer could not reduce the existing benefits such as piece-work rates,^{8/} and that the Employer could not "go out of business." The Employer presents several witnesses in support of the allegations. One such witness relates that, at a union meeting two days before the election, Petitioner's Representative Bracha stated ". . . to the effect that whatever we had now for benefits we cannot lose." The same witness alleges that at earlier meetings the question of the Employer's closing the plant was aired by other employees, with Bracha always responding "that there was no way in hell that he (Hittleman) could close the plant." The witness does not recall Bracha referring to the Employer's obligation to bargain. The witness does admit, however, that in the Employer's meeting the employees were advised by Employer's President Hittleman "that he would not close the plant, but that if he wanted to he could close the plant, but that he didn't want to, that whatever the people wanted he would go along with." Another

^{8/} The Petitioner's March 10, 1976 leaflet entitled "Women Who Work In Industry Need the UAW." states, inter alia, "A UNION CONTRACT will mean that the company cannot cut your piece work prices anytime they want to." Similarly, the Petitioner's letter of March 3, 1976 states in part: "The low wages, out-of date benefits and the cutting of piece work rates will not be changed without a strong membership and union to back up every worker."

witness relates that, as early as the January 23, 1976 meeting and in subsequent meetings, the question as to whether or not the Employer could close the plant at will was raised by the employees, and that in answering Bracha constantly asserted that "the law" prevented the Employer from doing so. The same witness states that Bracha also constantly "... told us that if the Union was voted in the Company or Ben couldn't take away any of the benefits we have now." Again, Bracha made no reference to a bargaining obligation. However, that same witness goes on to further relate that, in the Employer's two meetings with the employees prior to the election, Employer's President Hittleman related that "... he could close the doors if he wanted to but that he did not want to, that he would go along with whatever the people wanted, " and "... regarding the benefits that nothing was guaranteed until he put his name to the contract."

Other witnesses state essentially the same as the second witness quoted above.

Additionally, the Employer submits certain documents distributed by the Petitioner during the course of the campaign. One such letter, dated February 23, 1976, states in part:

"And . . . don't let anyone try to kid you--

"1. The company cannot--by law--close up the plant when you want to have your own union.

"2. The company cannot--take away any of the few benefits you now have, such as bonuses, holidays, vacations, etc.

"3. AND THE COMPANY ISN'T TELLING YOU THE TRUTH IF THEY SAY THEY CAN DO THE ABOVE!"

The Employer also submits other documents distributed by the Petitioner at various other times which attempt to impart essentially the same message.

It is apparent that the alleged misrepresentation committed by the Petitioner relative to the Employer's legal rights or lack thereof was promulgated very early in the campaign. It is further apparent that the Employer both had the opportunity to respond and in fact did respond

to the Petitioner's assertion, particularly through its letter dated March 11, 1976. I conclude that these alleged misrepresentations by the Petitioner were clearly recognizable by the employees as campaign propaganda and could be evaluated by them as such. Moreover, I conclude that under all the circumstances, including the duration of the debate between the parties over the issues and the Employer's rebuttal of the alleged misrepresentations, the setting aside of the election is not warranted. Modine Manufacturing Company, supra.

Concerning sub-paragraph (d), the Employer asserts that the Petitioner deluded the employees into believing that they would not be required to pay any assessments as members of the Petitioner or a local affiliate. The Employer cites certain documents ^{9/} distributed by the Petitioner which set forth that claim. Additionally, certain witnesses presented by the Employer state that at union meetings Petitioner's Representative Bracha made essentially the same claim.

To establish the falsity of these pre-election claims by the Petitioner, the Employer relies on the application and dues authorization card distributed among employees by the Petitioner after the election. That card is identified in the upper left-hand corner as "A 57-58 Revised 12/62." The application portion of that card allows the Petitioner to enter into contracts with employers which provide for the deduction or collection of "dues, fees, assessments or other contributions payable" to the Petitioner. ^{10/} On the strength of the post-election distribution of the aforementioned "12/62" card, the Employer asserts that there is reason to believe that the Petitioner misrepresented the facts relative to assessments prior to the election.

The Petitioner contends, however, that it does not now and has not for several years levied assessments. It explains that the distribution of the "12/62" authorization cards after the election was due to an administrative error.

^{9/}The Petitioner's leaflet entitled "What Your Former Company Workers Have to Say to You" dated March 30, 1976 and its earlier leaflet entitled "Check the Facts" of an unspecified date but distributed sometime prior to March 15, 1976. ^{10/} It is acknowledged by the Employer that, prior to the election, the Petitioner circulated a more recent combination application/dues authorization card which contained no reference to assessments but did provide for the deduction or collection of "dues and fees." Such card is identified in the upper left-hand corner as "A 57-58 Revised 7/69."

It is noted that nowhere in the Petitioner's current (1974) International Constitution is there reference to the term "assessment" or indication of any authority by any body of the Petitioner to levy "assessments". Thus, it appears that the Petitioner is not authorized to levy assessments. The Employer is unable to overcome that defense because of its admitted lack of evidence to the contrary. Accordingly, I conclude that the Employer has failed to meet the required burden of proof to support its contention that the Petitioner engaged in a substantial pre-election misrepresentation in this respect. I therefore recommend that this portion of the Objection be overruled.

For the reasons set forth above, I recommend that Objection No. 2 be overruled in its entirety.

OBJECTION NO. 3:

Using the same factual situation described above in Objection No. 1, sub-paragraph (c), relative to the payment by the Petitioner of money to certain employees who came forward to testify on the Petitioner's behalf in an unfair labor practice investigation, the Employer further argues that these payments constitute a "bribe" which destroyed the integrity of the election. In this connection, the Employer relies on the dicta ^{11/} and cases cited in footnote 6 of the Supreme Court's Savair decision. The harm of the payment, argues the Employer, lies in the fact that the employees involved were not losing wages or other money as they, or at least most of them, were on their so-called "free time." The Employer further argues that the excessive payment of \$20.00 to the second set of ^{12/} four witnesses compounds the harm and tends to reveal the illegality of the Petitioner's motives. The Employer argues that, at the very least, even if the motive was not unlawful, the effect was the same -- the recipients would be unduly motivated to vote for the Petitioner.

^{11/} N.L.R.B. v. Savair Manufacturing Company, 414 U.S. 270, 84 LRRM 2929, 2932.

^{12/} All four of these witnesses are employed on a piece-rate basis. The minimum rate is \$2.31 per hour; the normal hourly piece-rate approximates about \$4.00 per hour, perhaps slightly less. It appears that none of these four witnesses spent much more than two hours with the Petitioner's representative on that occasion. Thus, it could fairly be maintained that the witnesses were "overpaid" by about \$12.00.

The investigation indeed revealed that several (but not all) of these employees did not actually "lose" money by appearing to give an affidavit or statement. The investigation further revealed, however, that in no instance was the payment of that money conditioned on the outcome of the election or on the way the particular employee voted. Nor was the payment ever conditioned upon the substance or worth of the employees' testimony or the eventual Regional Office decision relative to the unfair labor practice charge.

Moreover, I am persuaded by all the facts that the excessive payment of \$20.00 to four employees was, as the Petitioner contends, an "honest mistake" on the part of employees in the Petitioner's office. In reaching this conclusion, I rely on the evidence of one of the second set of witnesses, the only one to whom the Petitioner's representative made any specific reference of compensation at that time, to the effect that the representative indicated that the compensation "would probably be around five dollars." Additionally, I rely on other expense vouchers furnished by the Petitioner which show that the "traditional" compensation rate was \$5.00, or \$5.00 per hour. Additionally, there is no evidence that the Petitioner's representative became aware of the "overpayment" until after the election was conducted, and, therefore, I cannot condemn the Petitioner's failure to somehow vitiate the effects of the overpayment. Even aside from those factors, however, I would not find that the payments were so "grossly disproportionate" as to warrant sustaining the Objection. Quick Shop Markets, Inc., 200 NLRB 830 and 204 NLRB 1150, enfd. 492 F. 2d 1248 (C.A. 8, 1974).

Since I have found no evidence of an illegal motive by the Petitioner, the question thus becomes whether any payment to employees by the Petitioner not in direct relationship to actual losses of wages or expenses incurred by those employees is inherently destructive of the desired conditions of an election.

The Board has never articulated a policy such as is now advanced by the Employer. The Board and the courts have condemned "grossly disproportionate" compensation for campaign-related activity. E.C., Collins & Aikman Corporation v. N.L.R.B., 383 F. 2d 722 (C.A. 4, 1967); Teletype

Corporation, 122 NLRB 1594. The Board has additionally condemned the "something for nothing" approach in an obvious effort to buy votes (e.g., General Cable Corporation, 170 NLRB 1682) and the "conditional gift" found in Wagner Electric Corporation, Chatham Division, 167 NLRB 532, which purchases the fealty of the employee.

There is present here none of those situations. What is present is what may be described as a simple commercial transaction -- a temporary exchange of the employee's time (albeit, not necessarily scheduled working time) on behalf of the Petitioner, without additional commitments or conditions and at a rate roughly comparable to or at least not "grossly disproportionate" to the wages the employee earned elsewhere: a quid pro quo.

Absent the specific conditioning of that compensation upon the outcome of the election or the employee's selection of the choices on the ballot, I conclude that the element of "bribery" is not present here and, therefore, recommend that this phase of Objection No. 3 be overruled. Cf. Quick Shop Markets, Inc., *supra*; GTE Lenkurt, Incorporated, 209 NLRB 473; Jat Transportation Corp., et al., 131 NLRB 122, 123-124; David Goetz, d/b/a Federal Silk Mills, 107 NLRB 876.

The Employer next alleges, through its various witnesses, and the Petitioner admits, that at the final union meeting prior to the election the Petitioner made reference to the payment by the Petitioner of mortgages, rents, etc. of striking employees.

One such witness presented by the Employer states that Petitioner's Representative Bracha responded to a question concerning the economic consequences of strikes upon employees by answering that "the employees would not lose their homes, that ~~The~~ Union would pay the mortgage and light bills." The witness claims that Bracha did not explicitly condition those payments upon the employee's own inability to pay or threats of foreclosure, but rather said "no one loses their home or has their lights or telephones shut off when they go out on strike, the UAW pays for it."

Moreover, according to the witness, Bracha indicated that the employees would not be required to reimburse the Petitioner for its disbursements. Several other witnesses generally support this witness' version.

However, another witness presented by the Employer in part contradicts the first witness quoted above and relates as follows:

"I recall that in the last union meeting (only) there was some reference in that meeting about the Union paying our mortgages and lights. I believe that there was talk in general about going out on strikes and who would pay our mortgages (I think that the question was asked by [an employee] 'would the Company [sic] pay my mortgage?') and Bracha (Tony) answered that it would and then someone else asked: 'How about my light bill?' and Tony again answered 'Yes' and then someone else asked about something else and Tony again answered 'Yes' (I believe that question was about the payment of rent.) Tony did not give any explanation about that and everyone thought it was funny and laughed about it because it sounded so ridiculous and then [an employee] asked if we had to pay it back and Tony said no and that shocked everyone and then someone asked if there would be assessments and Tony said there wouldn't. Then someone asked where they would get all that money from and Tony said: 'From the Union' and then went on to say how it had all this money. (He quoted a figure but I don't recall it now.) I did not then and do not now believe that. I don't recall Tony giving any qualifications on those statements, and I don't recall him saying anything to the effect that the Union would not pay any mortgages due before we went out on strike. What he did express was that if the employee himself could not afford the mortgage and there was a threat of being foreclosed on them the Union would pay that mortgage, and he said - when the question about the rent was brought up - that the same thing applied for rent as applied to the mortgage. The way that I understood it was that if we didn't have a big bank account and couldn't afford those items then the Union would pay it for us, but it was not a case of the Union paying that money just to anyone and everyone because they were on strike. The part that got to me, however, was the part about not paying it back. This whole issue had never been

63

brought up before, to the best of my knowledge, in any of the other meetings which I attended. (Actually there was but one previous meeting which I attended.) This is really the only thing about the Union's fourth meeting which stuck in my mind."

Bracha's version of his remarks is as follows:

"During the campaign, I did tell the employees, at union meetings, that in the past in some cases that if employees were threatened (while on strike) with foreclosure that the Union has paid their mortgages and rents. I cannot recall when exactly this issue came up. I do not think that I made this remark more than once. I am certain that I had made that remark early in the campaign because the employees were constantly talking about dues and strikes. I believe that I did not make that remark the night before the election, the meeting that night. I did not tell the employees at any time that if they did go out on strike the Union would pay their mortgages and lights; I told them only that in the past the Union had, in some circumstances, paid mortgages, lights and phone bills. I said that those bills would be paid only IF certain conditions warranted it; such as on rents that that employee was to be evicted, that the bank was foreclosing on a mortgage or that the utility company was threatening to turn off the particular utility. (I believe my own local, #133, has done this very same thing in the past. I did not tell the employees that all those who went out on strike would have their mortgages paid or their rent paid or their utilities paid while they were out on strike. I told them that the Union did not pay for automobiles but that if a company was threatening to take that car away, that the Union would contact that company and try to get them to defer taking away the car. I also told them that we would go to banks or the rentor and try to impress them with the fact that the employee was on strike and to hold back in taking the action they intended. I then went on to say that if we could not prevail upon the bank or the rentor then the Union would pay the mortgage or rent or room rent and that I did not know of anyone who had been evicted or foreclosed while on a legitimate strike for this Union. I did tell the

64

employees that during the strike that the Union would pick up all their medical insurance payments (for plans that they had with the company) I told them employees that if the Union did pick up the mortgage or rent that they would not have to pay back any of the Union's strike insurance benefits (which covers payments such as mortgages and rents, lights, etc. as well as the weekly stipend). I did, however, tell the employees that any bill due before they went out on strike would not be paid by the Union as such was not due to the strike."

While there are serious differences as to what was said by Bracha on this subject, in all versions Bracha failed to place any qualification upon who would be eligible for such financial assistance from the Petitioner.

Assuming, arguendo, that the version presented by the first witness quoted above, is accurate, the question posed by this portion of the Objection thus becomes whether the Petitioner's offer realistically constitutes an inducement which could reasonably be found to have caused the employees to vote for the Petitioner. There is, first, ample testimony that the employees who were present were, in fact, skeptical and incredulous. Moreover, the alleged offer would have to be weighed by the employees against the other attendant economic hardships they could reasonably expect to experience during the course of any strike. As Bracha's alleged offer of financial assistance was not restricted to only those who voted for union representation or otherwise engaged in union activities, it seems unlikely that the offer would, in fact, constitute an inducement for an employee to vote for union representation, when that employee could avoid those economic hardships caused by strikes by voting against union representation. Accordingly, I conclude that the Petitioner's remarks in this regard did not constitute financial inducements to employees to demonstrate their support of the Petitioner which would warrant setting aside the election, and I recommend that this allegation of Objection No. 3 be overruled.

For the reasons set forth above, I recommend that Objection No. 3 be overruled in its entirety.

65

OBJECTION NO. 4:

In this Objection, the Employer alleges that the Petitioner threatened the employees with "retaliation or discharge if they did not ^{13/} vote for the Petitioner."

In support of the allegation, the Employer first presented an employee-witness who alleged that, at the first union meeting which he attended, he inquired of Petitioner's Representative Bracha what would happen to him, the employee, if he did not want to join the Petitioner. It is alleged by the witness, but denied by Bracha, that the latter answered, "You'll have to find a new job." The employee admits, however, that Bracha did not specifically threaten to have the employee discharged. The employee further asserts that Bracha was not then referring to and had not alluded to referred to the prospects of a union security clause in the contract. Therefore, the Employer contends that the Petitioner's threat interfered with that employee's right and all employees' rights to engage in or refrain from engaging in union activity.

While the employee was unable to recall the exact date of that union meeting, it appears, from other aspects of his testimony, that the employee refers to Petitioner's January 23, 1976 meeting. ^{14/}

Other witnesses were presented by the Employer relative to these Objections, several of whom also attended that particular meeting. None of those witnesses was able to offer testimony corroborative of the above-quoted employee. Moreover, one such witness presented by the Employer states (in conformance with Bracha's testimony) that, at one or more meetings attended by the above-quoted witness, Bracha explained the obligations of employees in a union shop. Other witnesses presented by the Employer similarly testify to instances when Bracha explained at meetings about "union shops" and "copenshops." No other employee related that, prior to the election, he or she had been threatened or had witnessed a threat by the Petitioner relative to employees' right to join or refrain from joining the Petitioner.

^{13/} The same allegation was set forth by the Employer in Case No. 1-CB-3248 discussed in footnote 6 above. That charge was dismissed in its entirety by the Regional Director on May 3, 1976, and the dismissal was sustained by the General Counsel on June 14, 1976.

^{14/} The witness further relates that the day after that meeting he advised Employer's President Hittleman of the alleged remark. According to the witness, Hittleman responded "... that as long as I worked for him I didn't have to belong to a union or that I would not have to belong to a union." Apparently, however, Hittleman did not give a full legal explanation concerning this matter.

66

Relative to this particular allegation, on the basis of all the testimony, I am convinced that, even assuming, arguendo, that Bracha made the remark attributed to him by the witness, such conduct does not warrant setting aside the election. The preponderance of the testimony indicates that at the most it was a case of misunderstanding by the employee-witness. Moreover, the alleged threat, which lacks corroboration, was an isolated incident, and the employee apparently had his fears, if any, allayed by the Employer's President.

The Employer asserts further that a former employee was similarly threatened by other employees. Quoting from the affidavit of Employer's Vice President Hittleman, it is alleged that that former employee^{15/} was told, by two other unnamed employees, that "he had to join the Union if he wanted to stay here because they were definitely going to have a union in here."

That former employee was interviewed in the course of this investigation and denies that any remark to that effect was made to him. He says instead that the only remark made to him was to the effect that he would not be eligible to vote in the election because of his hiring date. Moreover, the two employees "suspected" by the Employer of having made the alleged threat deny any such remarks. Accordingly, I conclude that there is insufficient evidence that this particular employee was, in fact, threatened. Moreover, even if he was, there is no evidence that the Petitioner knew of, condoned, or ratified the alleged threat.

Finally, in support of this Objection, the Employer produced three additional witnesses. Two of these witnesses (whom, the Employer asserted, "felt" threatened) deny any threat of any sort by any agent of the Petitioner.

The third such witness states that she attended only one union meeting, which meeting was held after the election. She alleges that at that meeting "the Union representatives" stated that "we could be fired for not signing" a union card. She relates further that "[T]hey kept on talking

^{15/} That employee was employed for but five days, during the period of March 1 - March 5, 1976, at which latter time he voluntarily quit. The employee did not vote in the election; nor would he have been eligible to vote even if still employed because the payroll period for eligibility was the period ending February 20, 1976.

about how it would be unfair for the other members to be paying dues for their protection but us not paying dues. They used the term 'union shop' and one of the Union men said that once it was a union shop most of the employees who hadn't signed a membership card would have to or should sign a membership card, for their protection."

From the foregoing testimony, it is clear that the discussion was a clearly permissible reference to the legal effects of a union security provis Moreover, the discussion occurred after the election and could not have affected the integrity of that election.

Accordingly, for all the reasons set forth above, I recommend that Objection No. 4 be overruled in its entirety.

OBJECTION NO. 5:

Under this Objection, the Employer alleges that there was misconduct at the polling place which warrants setting aside the election.^{16/} Specifically, it is contended that Francis Roberts, alleged in the complaint in Case No. 1-CA-11,410 to have been unlawfully discharged by the Employer, campaigned within the polling area when he came to vote. (Roberts denies such conduct.) To support the allegation, the Employer presents the testimony of an employee who "escorted" Roberts to and from the polling site. That employee states that, as Roberts was leaving, he stopped and conversed with an employee waiting in line to vote and failed to obey the "escorter's" request that Roberts "move out." The "escorter" estimates that the conversation, which he did not hear, lasted about 15 seconds.

The employee to whom Roberts spoke states that Roberts said "hello" to her and then remarked that he would see her in the following week at a social club to which they belong. The same witness believes that Roberts may also have talked briefly to another employee in the line at that time. That second employee states that he and Roberts only exchanged "hellos", and that there was no further conversation.

^{16/} The Employer also asserted, as a part of this Objection, the allegation that throughout the campaign, the Petitioner made several claims to the effect that if the employees voted for union representation, the Employer could not "shut down" its plant. As that allegation has been discussed in Objection 2, sub-paragraph (c), I omit further discussion of it here.

68

These brief, innocuous, and isolated conversations not involving agents of either party, fall far short of transgressing the Board's proscriptions concerning polling place activities as set forth in Milchem, Inc., 170 NLRB 362 and subsequent cases. Therefore, I recommend that Objection No. 5 be overruled.

THE CHALLENGED BALLOTS

The ballots of Gary Malino, Gladys Czerbinski, Ferenc Molnar, Gregory Baisch, Robert Hart, Marie Morris, and Francis Roberts^{17/} were challenged either for alleged cause by a party or by the Board Agent conducting the election because their names did not appear on the list of eligible voters supplied by the Employer.

By letters dated June 30 and June 28, 1976, respectively, the Employer and the Petitioner stipulate that Malino was not eligible to vote in the election in that he possesses the attributes of a managerial employee, and that, therefore, the challenge to his ballot should be sustained.

In his present position as chief inspector, Malino performs a substantial amount of product testing himself, principally in his office in the production area. He is charged with the overall responsibility of the quality of all items produced by the Employer. In this capacity, he reports directly to the Employer's President. The production and maintenance employees are directly supervised by foremen, who, in turn, are supervised by the plant manager. Malino has received informal and formal training directly and indirectly related to inspection procedures.

Malino performs all "first piece" inspections on every job in the plant and approves or disapproves the "running" of those jobs on the basis of his inspection. In the course of these first inspections, Malino may be required to determine whether an item may be acceptable to the customer, even though it differs from the ordered item. Malino has the authority to "shut down" any manufacturing line when the items being produced are defective. The exercise of this authority could adversely affect the ultimate earnings of the employee(s) involved. He also performs all

^{17/} Employees Morris and Roberts are alleged to have been discharged in violation of Section 8(a)(3) of the Act in the complaint which issued in Case No. 1-CA-11,410 on April 6, 1976.

final inspections prior to the shipment of those items to the customer. Malino has the authority to approve or reject the shipment of goods to the intended customer, basing his conclusion on his knowledge of the customer, the item, and its intended use. Malino also represents the Employer in its negotiations with its customers involving problems of the quality of the items. Among other aspects of these negotiations, after investigating the cause of alleged defects, Malino determines whether or not the customer will be allowed to return (for credit) those items or whether the customer is liable for a "remanufacturing charge." Apparently, only highly unusual situations of this nature are referred to the Employer's President for resolution. Further, Malino provides the Employer with his considered judgment as to anticipated problems in the production and maintenance of quality of certain items, which information is used to formulate the Employer's bidding and pricing proposals. It appears that in Malino's absence, his duties are performed essentially by either the Employer's President or its plant manager.

It is further noted that Malino regularly attends supervisory meetings, at which meetings the Employer's labor relations policies, inter alia, are discussed. Moreover, while Malino has not actually exercised the authority, he testifies that when he assumed the position of chief inspector he was simultaneously given the authority by the then plant manager to discharge "roving inspectors" under his jurisdiction. ^{18/} Malino testifies that he has complained about the "workmanship" of particular employees either to the foreman involved or to the Employer's President. However, on those occasions, he made no specific recommendations.

Malino has unlimited access to all of the Employer's files. Malino is hourly paid, as are some departmental foremen and all the production and maintenance employees, but does not punch a time clock. His working hours are essentially similar to those of the production and maintenance employees, as are his fringe benefits.

However, despite these similarities, there are substantial reasons to warrant the conclusion that Malino does not possess a sufficient community of interest with the production and maintenance employees to

18/ At present there are no employees in that classification. However, alleged discriminatee Roberts was a "roving inspector" at the time of his discharge.

warrant inclusion in the unit. Rather, the nature and scope of Malino's duties and responsibilities, including his exercise of technical judgment and the wide latitude of his discretionary authority with respect to the Employer's business relationship with its customers, his ability to affect the earnings of the production employees, and his relationships to management warrant the conclusion that Malino is more clearly identified with the management of the Employer.

Accordingly, I approve the stipulation of the parties and recommend that the challenge to the ballot of Gary Malino be sustained. In view of that recommendation, I further recommend that a revised tally of ballots be issued indicating that the remaining challenged ballots of Czerbinski, Molnar, Baisch, Hart, Morris, and Roberts are no longer determinative of the results of the election.

SUMMARY

For the reasons set forth above, I recommend the following:

- (1) that the Employer's Objections be overruled in their entirety;
- (2) that the challenge to the ballot of Gary Malino be sustained;
- (3) that a revised tally of ballots be issued indicating that the remaining challenged ballots no longer affect the results of the election; and
- (4) that, as the Petitioner has received a majority of the valid votes counted, a certification of representative be issued.

Harold M. Kowal

Harold M. Kowal, Acting Regional Director
National Labor Relations Board
First Region
Boston, Massachusetts

Dated at Boston, Massachusetts
this 22nd day of July, 1976. 19/

19/ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D. C. Exceptions must be received by the Board in Washington

★ NOTICE TO EMPLOYEES

FROM THE

National Labor Relations Board

A PETITION has been filed with this Federal agency seeking an election to determine whether certain employees want to be represented by a union.

The case is being investigated and NO DETERMINATION HAS BEEN MADE AT THIS TIME by the National Labor Relations Board. IF an election is held Notices of Election will be posted giving complete details for voting.

It was suggested that your employer post this notice so the National Labor Relations Board could inform you of your basic rights under the National Labor Relations Act.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refrain from any or all such activities

It is possible that some of you will be voting in an employee representation election as a result of the request for an election having been filed. While NO DETERMINATION HAS BEEN MADE AT THIS TIME, in the event an election is held, the NATIONAL LABOR RELATIONS BOARD wants all eligible voters to be familiar with their rights under the law IF it holds an election.

The Board applies rules which are intended to keep its elections fair and honest and which result in a free choice. If agents of either Unions or Employers act in such a way as to interfere with your right to a free election, the election can be set aside by the Board. Where appropriate the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

NOTE:

The following are examples of conduct which interfere with the rights of employees and may result in the setting aside of the election.

- Threatening loss of jobs or benefits by an Employer or a Union
- Misstating important facts by a Union or an Employer where the other party does not have a fair chance to reply
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

Please be assured that IF AN ELECTION IS HELD every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with this agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

EXHIBIT A



NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

These ballots are to be used by the National Labor Relations Board in the election of representatives of employees of the Federal Government, its agencies, departments, and offices, and in the election of representatives of employees of the Federal Government, its agencies, departments, and offices, and in the election of representatives of employees of the Federal Government, its agencies, departments, and offices.

DATE, TIME AND PLACE OF MEETING

DATE: THURSDAY, NOVEMBER 1, 1973
TIME: 3:30 P.M. to 4:00 P.M.
PLACE: CONFIDENT FRANCHISES

RECEIVED
 OCT 26 1973
 UAW - FLORIDA

UNITED STATES OF AMERICA
 National Labor Relations Board
OFFICIAL SECRET BALLOT

STATEMENT OF THE BOARD OF CONTRACTORS, FORESTVILLE, GEORGIA

Do you wish to be represented for purposes of collective bargaining by -
 Our choice of representation is the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)?

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL
 IMPLEMENT WORKERS OF AMERICA (UAW)?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES
☐

NO
☐

DO NOT SIGN THIS BALLOT
 If you sign this ballot, return it to the Board Agent for a new one.

THE BOARD HAS NO BALLOTS. This is a secret ballot. Only when employees receive ballots.

UNION MEMBERS MAKE 30% MORE

The Bureau of Labor Statistics indicates the median earnings of union members is thirty percent higher than the non-union counterpart. Even in the clerical and other white-collar fields, the union members' earnings prevailed for those in industry. One of the reasons (that is) the Union people averaged about \$2,500 a year more than the non-union people. How does that grab you when your neighbor is paid about the \$85 a year he saves on dues? On average he's paying over \$1400 annually in "non-union dues" for the privilege of not having job security.

EXHIBIT C

~~SECRET~~

74 Women Who Work in Industry

Need the UAW.

TO BE SURE OF:

- Guaranteed Seniority (Job Security)
- Highest Wages
- Rapid Correction of Grievances
- Fair Production Standards (No Speed Up)
- Safe, Sanitary Working Conditions
- Full Hospital, Medical and Surgical insurance protection paid by company
- More Paid Holidays and other Fringe Benefits
- Longer Paid Vacations
- Fair Treatment and the abolishment of Boss-favoritism

We have 175,000 women members... and more every day as women workers turn to the UAW for dignity and protection.

Our women members long ago asked for... and received... extra attention because they had extra problems. For years, for example, they sometimes did a man's work but got a woman's pay.

Women members of the UAW have equal opportunity on the job and in their union. They share all the benefits, privileges and responsibilities of their membership.

Women have made a tremendous contribution to the success of the UAW and hundreds of them presently serve as union officials.

IT PAYS TO BELONG TO THE UAW

UAW members enjoy the highest wages and benefits in the world. A UNION CONTRACT is more than just wages.

A UNION CONTRACT will mean "Black and White" proof that you will have an equal voice in your everyday working conditions.

A UNION CONTRACT will mean that the company can not cut your piece work prices anytime they want to.

A UNION CONTRACT will mean that your boss or company will not be able to discriminate or play favorites.

A UNION CONTRACT will mean you no longer will be alone trying to get justice from a large company. No longer will you be "whats his name" on that machine or bench. And no longer will you be told "if you don't like it here, get out, the door swings both ways."

A UNION WILL GIVE YOU THE DIGNITY ALL WORKERS DESERVE WHEN THEY UNITE AND JOIN TOGETHER FOR THEIR GOOD AND THE BETTERMENT OF THEIR FAMILIES.

WHAT YOU HAVE READ HERE IS TRUE AND ARE FACTS AND ARE GUARANTEED BY THE UAW AND/OR THE UNITED STATES GOVERNMENT... IF YOUR FOREMAN TELLS YOU THAT YOU CAN LOSE ANY OF THE BENEFITS YOU NOW HAVE BY VOTING FOR YOUR UNION, TELL HIM TO PUT IT IN WRITING, LIKE THE UAW HAS.

VOTE

YES



EXHIBIT D

Fraternally,

Tony Bracha
Anthony Bracha,
International Rep.

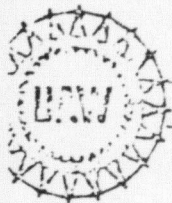
Allan DeLorenzo
Allan DeLorenzo,
International Rep.

Brad Stewart
Bradley Stewart,
International Rep.

AB:AD:BS:dsm
opcju42
0310760

75

PLEASE REPLY TO
ANTHONY J. DeLORENZO, DIRECTOR
REGION No. 9-A UAW
8 ELLSWORTH ROAD
WEST HARTFORD, CONNECTICUT 06107
AREA CODE 203 521-0410



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

LEONARD WOODCOCK, PRESIDENT

EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

PAT GREATHOUSE • KEN BANNON • NELSON JACK EDWARDS • DOUGLAS A. FRASER • DENNIS McDERMOTT • IRVING BLUESTONE • ODESSA KOMER

Dear Bristol Spring Employees:

We don't usually answer Company letters, but the last letter you all received from Mr. Hittleman should be commented upon.

First he said that for almost thirty-six (36) years no worker has ever been laid-off. Now that would be quite a record if he was really honest about a statement like that and told the whole truth. I am sure you would like to know how many workers were FIREd by either him or his wife. We believe the list would be endless. And to top it off, when some people are fired, the Company fights them to prevent them from getting unemployment compensation.

Secondly, he says he is apposed to having a Union to deal with. Of course he is. Most owners of factories are and there are generally three main reasons:

- 1) IT WILL COST HIM SOME OF THE BIG PROFITS HE IS NOW POCKETING ALL TO HIMSELF AND
- 2) HE WON'T HAVE THE FULL POWER TO HIRE, FIRE, KEEP PAYING YOU THOSE LOW WAGES, CONTINUE OUTDATED BENEFITS, PENSIONS, ETC. AND NEITHER HE NOR HIS WIFE WILL BE ABLE TO CUT ANY PIECE WORK PRICE ANY TIME THEY WANT TO.
- 3) AND OF COURSE HE WON'T BE ABLE TO FIRE YOU FOR ANY REASON, AND WITH YOUR OWN UNION, DISCRIMINATION AND FAVORITISM IS STOPPED.

Mr Hittleman is trying to give everyone the impression that he's the nice guy wearing the white hat. He says he now believes that each employee should have the right to vote in a secret ballot election supervised by the U. S. Government. We don't want to sound sarcastic, but management has been against Unions for many years and Mr. Hittleman is no exception. He and his attorneys agreed, finally, to an election date of April 2, 1976. But what he doesn't want to tell you is that I sent him a letter on your behalf, dated January 26, 1976, after the majority of the employees expressed their desire to have the UAW represent them. (Please see copy of letter enclosed.)

I asked him to sit down and negotiate a Union contract with guarantees no worker at Bristol Spring has now. Mr. Hittleman refused to do that. Instead, he hired a law firm and I repeat - - - he is continuing to fight the workers to deprive them of higher just wages and fairer fringe benefits.

-continued-

EXHIBIT E

We must also all remember this: IT IS THE U. S. LAW - NOT MR. HITTLEMAN - THAT GIVES WORKERS THE RIGHT TO CHOOSE THEIR OWN UNION AND TO HAVE A SECRET BALLOT ELECTION FOR THAT PURPOSE. In his letter he sounds as if he's doing you a big favor . . . and permitting you to vote.

Now about his closing the plant when you vote for your Union. He speaks with Forked Tongue. At the plant last week, it was reported that he said if the Union gets in he'll close the plant. But in the letter he writes, "I have no plans to close the business no matter what happens in the election."

He tried to scare you before but we cannot believe that any of you were scared or fooled.

Now in his letter he mentions a Textile Plant that closed in 1956 -- twenty years ago. We wonder, and we believe you are questioning the facts also, that Mr. Hittleman did not name the plant or where it is or what Union it was, etc., etc. But we are now checking any closing of Textile Plants back in 1956 and will have more to say about this in the very near future.

One last thing --- we wonder why Mr. Hittleman didn't mention the hourly average wages of UAW members (over \$6.00 per hour) or the twelve (12) paid holidays or the extra Christmas-New Years paid days off, or the fully paid Blue Cross and CMS up to date plans.....or the \$600.00 plus per month pension plans so many UAW Union members are enjoying today.

OR WHY

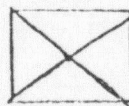
he failed to mention the fact that some of the workers at Bristol Spring finally got a raise to \$2.31 an hour when the U. S. minimum wage law was raised.

Now isn't that something you should have mentioned Mr. Hittleman?

FOR YOURSELF AND THE GOOD AND WELFARE OF YOUR FAMILY

VOTE

YES



Most sincerely,

Anthony J. Bracha
Anthony J. Bracha
International Representative

AJB/ddp
opcju42
031876

enc.

77

PLEASE REPLY TO:
ANTHONY J. BRACHA, DIRECTOR
REG. NO. 9-A UAW
6 ELLSWORTH ROAD
WEST HARTFORD, CONNECTICUT 06107
AREA CODE 203 521-6419

INTERNATIONAL UNION, UNITED AUTOMOTIVE, AIRCRAFT & MANUFACTURING ENGINEERS WORKERS OF AMERICA

LEONARD WOODCOCK, VICE PRESIDENT

EMIL MAZET, SECRETARY TREASURER

VICE-PRESIDENTS

JAL GRIFFIN • FRED BARNER • NELSON JACK EDWARDS • DOUGLAS A. FRASER • DONALD M. DUNN • IRVING BLUSTONE • GEDYNA • OWEN

Dear Bristol Spring Worker:

Before a Union Election, most companies treat their workers very, very nice. Sort of an "Instant Love Affair."

Your Company is no exception. They may not be very strict on some of the Company rules they had been enforcing, or they may raise piece-work prices and sometimes give some workers some extra over-time.

They sort of want to lull you to sleep with their "all of a sudden good guy" policy. They sometimes want you to take home a fatter pay-check just before you vote and try to make you believe that "you've never had it so good."

To those of you who may be getting a "break" now, think of those whom the Company "never laid-off." Just look around you and remember those workers who tried very hard but just couldn't please Mr. Hittleman or his wife Hannah.

Don't be the next one to go...don't take a chance on being the next one fired. Friday, April 2nd is the day you finally think about yourself and your family. You've done enough for the Company whether you've worked there one month, one year, ten or twenty years. You've helped make tremendous profits for the Company in the past. Now it's about time you thought about yourself and did something for yourself.

The Company has the full power to set your wages, benefits, working conditions and working hours - without a Union to protect you.

When you vote yes ☒ for your Union, you will have a equal and effective voice in all of these matters. Think about it.

Don't let anyone fool you or scare you.

ON UNION ELECTION DAY

Vote YES ☒

Bristol Spring UAW Plant Organizing Committee

Anthony J. Bracha
Anthony J. Bracha

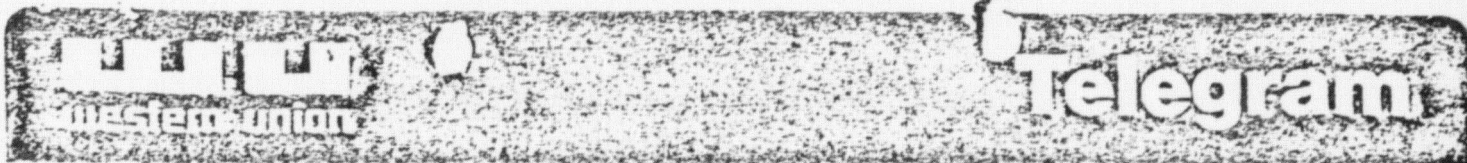
AJB/ddp
opcju42
encs.

EXHIBIT F.

0522760
MADE IN U.S.A.



78



BBE048(0723)(2-013589E211)PD 07/29/76 0723

ICS IPMTZZ CSP

2035494500 TDMT HARTFORD CT 126 07-29 0723A EST
FMS REGIONAL DIRECTOR, RUSH IMMEDIATELY VIA TELEX
REGION 1 NATIONAL LABOR RELATIONS BOARD 99 HIGH ST
BOSTON MA 02110

Handwritten notes:
223 355
05548
7-29
8548
PB ME

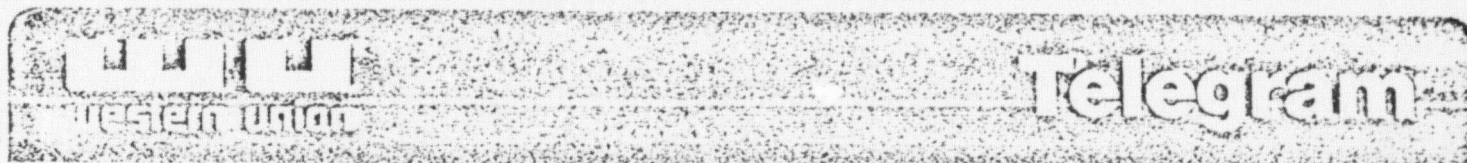
THE FOLLOWING TELEGRAM WAS SENT JULY 29, 1976 TO THE NATIONAL LABOR RELATIONS BOARD CARE EXECUTIVE SECRETARY 1717 PENNSYLVANIA AVE NORTHWEST WASHINGTON DC 20570.

RE THE BRISTOL SPRING MANUFACTURING COMPANY CASE #1-RC-14258.

ON JULY 26 THE UNDERSIGNED RECEIVED A 26 PAGE CONSOLIDATED REPORT ON OBJECTIONS AND CHALLENGED BALLOTS WHICH DEALS WITH EXCESSIVE COMPLEX FACTUAL AND LEGAL QUESTIONS.

THE UNDERSIGNED WAS PREVIOUSLY COMMITTED TO OTHER MATTERS THIS WEEK AND ON AUGUST 2 THUS IT IS RESPECTFULLY REQUESTED THAT THE TIME FOR FILING EXCEPTIONS IN THE ABOVE CAPTIONED CASE BE EXTENDED UNTIL

SF-1201 (R5-69)



AUGUST 11.

CC: UAW 8 ELLSWORTH ROAD WEST HARTFORD CT 06107 AND REGIONAL DIRECTOR REGION 1 NATIONAL LABOR RELATIONS BOARD 99 HIGH STREET BOSTON MASSACHUSETTS 02110.

THOMAS CLOHERTY MURTHA CULLINA RICHTER AND PINNEY PO BOX 3197
101 PEARL ST HARTFORD CT 06103

NNNN

Exhibit 8

79

TELETYPE

DATE: AUGUST 2, 1976
TIME: 11:28 a.m.
mh/fs

RE: THE BRISTOL SPRING MANUFACTURING CO., 1-RC-14,528. DATE FOR
RECEIPT OF EXCEPTIONS IN WASHINGTON IS EXTENDED TO AUGUST 9, 1976.

ROBERT VOLGER, DEPUTY EXECUTIVE SECRETARY
NLRB - WASHINGTON, D. C.

Exhibit 9

In the Matter of

 THE BRISTOL SPRING
 MANUFACTURING COMPANY
 Employer

and

INTERNATIONAL UNION, UNITED
 AUTOMOBILE, AEROSPACE &
 AGRICULTURAL IMPLEMENT
 WORKERS OF AMERICA (UAW)
 Petitioner

:
:
:
:
:
: CASE NO. 1-RC-14,258
:
:

: August 7, 1976
:
:
:
:
:

EMPLOYER'S EXCEPTIONS TO REGIONAL
 DIRECTOR'S REPORT ON OBJECTIONS

On April 8, 1976, the Employer filed timely objections to the election in the above captioned matter. A copy was timely served upon the Petitioner.

On July 22, 1976, the Acting Regional Director for the First Region of the National Labor Relations Board issued a Consolidated Report on Objections and Challenges in which he dismissed the Employer's objections in their entirety without offering the Employer the opportunity to present evidence and cross examine witnesses at a hearing.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the Employer respectfully files the following Exceptions to the Acting Regional Director's Report. The Employer respectfully requests that the Exceptions be considered by the Board and the Board set the election aside or order an evidentiary hearing.

Specifically, the Employer excepts to the Acting Regional Director's report as follows:

1. Pp 3-4 - The action of the Acting Regional Director in crediting Petitioner's representative Anthony J. Bracha in the face of directly contradictory testimony.

2. Pp 4-5 - The failure to consider whether the action of a Board Agent in accepting the gratuity of a lunch paid for by the Union in the presence of employees who also had their lunch paid for by the Union and subsequently received cash payments created the impression of Board support of the Union.

3. Pp 5 - The omission of the fact that the Union had made the decision to make cash payments to employees before any question of lost wages arose.

4. P 6 - The inference that employees who had already received payment from the Union would not expect compensation when a second request for assistance to the Union was made.

5. Pp 7 - The failure to consider the effect on other employees of the cash payments made in support of the Union.

6. P 8 - The omission of the fact that one employee voluntarily submitted another statement to the Union for the purpose of obtaining another \$20 payment.

7. P. 8 - The omission of any evaluation of the linguistic capabilities of employees.

8. P 9 - The conclusion that the Board's Notice to Employees was not made to appear as part of the Petitioner's other propaganda.

9. P 9 - The conclusion that use and alteration of a sample ballot by the Petitioner was not improper.

10. P 9 - The failure to consider the effect of the distribution of Exhibit C with Exhibit A.

11. P 9 - The conclusion that employees who received payments for statements and who observed a Board Agent also receiving a minor gratuity from the Union had no reason to believe that the Board condoned, sponsored or ratified these payments.

12. P 9-10 - The failure to consider that the combination of the Petitioner's use of government documents including a sample ballot in its campaign and the constant defacing of the official Election Notice created the impression of governmental support of the Petitioner.

13. P 10 - The conclusion that Objection 1 should be overruled.

14. P 10-11 - The crediting of the Petitioner's witness Bracha concerning wage rates without offering the Employer an opportunity to cross-examine. The Reports state that Bracha only admitted he "might" have informed employees about UAW wage rates. Exhibit D to the Report repeats the statement of the \$6.00 per hour wage rate.

15. P 10-11 - The failure to consider that the wage rates represented employees by the Petitioner involved different industries.

16. P 14 - The crediting of the Petitioner's representatives, without the opportunity for the Employer to cross-examine, that the Petitioner's action of distributing

authorization cards prior to the election that did not permit "assessments" whereas the cards distributed after the election authorizing assessments and other fees was solely due to an "administrative error".

17. P 15 - The failure to consider the misstatements as set forth on pages 17 to 20 of the Report as substantial misrepresentations.

18. P 15 - The conclusion that Objection No. 2 should be overruled.

19. P 16 - The failure to find that cash payments given to employees for demonstrating their support of the Union was an improper pre-election influence by the Petitioner.

20. P 16 - The finding that the payments were not conditioned on the worth of the employees' testimony since one employee who later submitted another statement which was not used by the Petitioner did not receive a payment.

21. P 16 - The finding, without offering the Employer an opportunity to cross-examine at hearing, that the Petitioner payments of \$20 were due to an administrative error which was not known by the Petitioner's representative.

22. P 16 - The finding that the \$20 payments per affidavit was not grossly disproportionate.

23. P 17 - The finding that payment over and above reimbursement for losses of wages or expenses to employees for submitting statements in connection with Board proceedings is proper.

24. P 17 - The failure to find that the cash payments to employees warrant setting the election aside.

25. P 20 - The reliance upon some statements of employees' subjective reaction to the Petitioner's promises rather than an objective evaluation of the misstatements of the Petitioner.

26. P 20 - The conclusion that Objection No. 3 should be overruled.

27. P 21 - The finding that Bracha's statement to an employee that he would have to find another job if he did not join the Union was not a threat to have him discharged.

28. P 22 - The reliance on the isolated nature of the threat and its effect rather than a consideration of the character of the threat.

29. P 23 - The recommendation to overrule Objection No. 4.

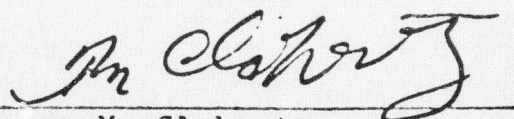
30. Pp 23-24 - The failure to consider the substance of Objection No. 5.

31. Pp 24 - The recommendation that Objection No. 5 be overruled.

32. P 26 - The recommendation that the Objections be overruled.

33. P 27 - The failure to recommend the election be set aside or, as a minimum, that a hearing on the matter be scheduled.

Respectfully submitted,



Thomas M. Cloherty
Murtha, Cullina, Richter and Pinney
101 Pearl Street, P.O. Box 3197
Westport, Connecticut 06182

85

AFFIDAVIT OF SERVICE

This is to certify that a copy of these Exceptions
and the accompanying Brief have been served by registered
mail on the following parties:

Regional Director
Region 1
National Labor Relations Board
99 High Street
Boston, Massachusetts 02110

Mr. Anthony J. Bracha
International Representative
UAW
8 Ellsworth Road
West Hartford, Connecticut 06107

86

AFFIDAVIT

STATE OF CONNECTICUT

ss: Hartford

August 7, 1976

COUNTY OF HARTFORD

I, RAYMOND MARKIE, of 198 Kazani Street, Forestville, Connecticut, being duly sworn, do depose and voluntarily state:

1. I am employed by The Bristol Spring Mfg. Co. as a coiler setup man.

2. On February 19, 1976 I was in the plant on lunch hour when someone said Francis Roberts wished to see me. I went out and Roberts asked me if I would go to the Union Hall in Plainville and make a statement. He said, "Don't worry about lunch, we will take care of it."

3. I went to the Union Hall and met Tony Bracha, Fran Roberts and the lawyer from the Labor Board and other employee. The lawyer took me and sat me down and started to ask me questions. We were all in a group together. The lawyer wrote up a statement and I signed. While we were preparing my statement, Fran Roberts took orders for lunch and went out and picked up the food. He returned and we all ate together.

4. While the other employee was giving his statement, Bracha told me that he would be paying us for our time. I returned to work with the other employees. We were all still in the room when Bracha told me I would be receiving a payment. I do not think the NLRB man heard Bracha. Yet, I did not think that he would object since I assumed it was all right if Bracha paid us. I did, however, had some doubts about it.

5. A short time later, 2-3 days, I received a check from the Union.

6. There were a few things that the NLRB man said that make me think he was against Ben Hittleman. He made comments during the taking of the statement like "That's a good point", "We will get him with that one" I figured that the NLRB man took a disliking to Ben and was on the other side.

I have read all of the above statement of two pages and it is true and correct to the best of my knowledge and belief.

/s/ RAYMOND N. MARKIE

Subscribed and sworn to before
me, this 7th day of August,
1976.

/s/ Thomas M. Cloherty
Thomas M. Cloherty
Commissioner of the Superior Court

JPV

Plainsville, Connecticut

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE BRISTOL SPRING MANUFACTURING COMPANY
Employer

and

Case 1-RC-14258

UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA - UAW
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to authority granted it under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections and determinative challenges in an election held on April 7, 1976, ^{1/} and the Acting Regional Director's Report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Acting Regional Director's findings and recommendations. ^{2/}

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for United Automobile, Aerospace and Agricultural Implements Workers of America - UAW, and that, pursuant to Section 9(a) of the Act, the foregoing

- 1/ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 43 for, and 36 against, the Petitioner; there were 7 challenged ballots. In the absence of exceptions, we adopt, pro forma, the Acting Regional Director's recommendation that the challenge to the ballot of Gary Malino be sustained. Accordingly, the remaining challenges are no longer determinative.
- 2/ Member Penello agrees that the alleged misrepresentations referred to in Objection 2 do not warrant setting the election aside, but does so for the reasons set forth in his dissenting opinions in Medical Ancillary Services, Inc., 212 NLRB No. 80 (1974), and Erene Lewis, 217 NLRB No. 45 (1975). Member Walther agrees with the conclusion that the election should not be set aside inasmuch as the same result is reached under any view of the applicability of Malino Manufacturing Company, 203 NLRB 527 (1973), and Hollywood Ceramics Co., Inc., 140 NLRB 221 (1962).

Exhibit 11

89

labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All production and maintenance employees employed at the Employer's Whiting Street, Plainville, Connecticut location, but excluding all office clerical employees, salesmen, confidential employees, professional employees, watchmen, guards and supervisors as defined in the Act.

Dated, Washington, D.C., October 6, 1976.

Howard Jenkins, J. Member

John A. Perello, Member

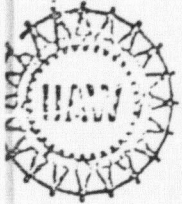
Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

90

PLEASE REPLY TO
 ANTHONY J. DELORENZO, DIRECTOR
 REGION No. 9-A UAW
 8 ELLSWORTH ROAD
 WEST HARTFORD, CONNECTICUT 06107
 AREA CODE 203 521-8410



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

LEONARD WOODCOCK, PRESIDENT

EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

P. T. GREATHOUSE • KEN BANNON • DOUGLAS A. FRASER • DENNIS McDERMOTT • IRVING BLUESTONE • ODESSA KOMER • MARC STEPP

October 12, 1976

Mr. Benjamin Hittleman, President
 The Bristol Spring Manufacturing Company
 123 Whiting Street
 Plainville, Connecticut

Dear Mr. Hittleman:

We have received the official certification from the National Labor Relations Board, and we are requesting the following information from you so we can intelligently develop the proposals to satisfy the basic needs of your employees and our members:

- 1) Names, ages, sex, marital status, dependents, classification, individual wage rates of pay and a copy of your wage structure for minimums and maximums of each labor grade or classification in effect.
- 2) What fringe benefits are currently in effect for all employees such as:
 - a) number of paid holidays;
 - b) amount of Life Insurance per employee, monthly cost per thousand dollars of coverage, and is the employee obligated to contribute;
 - c) weekly indemnity for Sickness & Accident benefits and duration of benefits for any one illness or accident, monthly cost per employee per each \$10 unit of coverage;
 - d) what coverage do the bargaining unit employees have for hospital, medical and surgical benefits? What is the monthly cost for these benefits in each category -- married, single and dependent coverage? Do employees contribute premium payments for such in whole or in part?
 - e) Does the company have a pension plan covering the bargaining unit employees? If yes, please furnish the Union with a copy of the Plan and the latest actuarial report and trustees' report. Is the Pension Plan contributory, in any fashion, by the employees in the bargaining unit?

Exhibit 12

91

Mr. Benjamin Hittleman, resident
Bristol Spring Manufacturing Company
Page 2

- f) We would like to know the name of the Insurance Company or Companies that underwrite the above-mentioned coverage.

Would you please send us at your earliest possible convenient time the information requested so we can be equipped to negotiate in a manner that is fair and equitable to all parties concerned.

Very truly yours,

Anthony J. DeLorenzo

Anthony J. DeLorenzo,
Director

AJDeL:dam
opeiu42

cc: Anthony M. Gerace ✓
Edward Rollo
Anthony J. Bracha
Michael J. Vernovai

92

PLEASE REPLY TO
ANTHONY J. DELORENZO, DIRECTOR
REGION NO. 9-A UAW
8 ELLSWORTH ROAD
WEST HARTFORD, CONNECTICUT 06107
AREA CODE 203 521-8410

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

LEONARD WOODCOCK, PRESIDENT

EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

AT GREATHOUSE • KEN BANNON • DOUGLAS A. FRASER • DENNIS McDERMOTT • IRVING BLUESTONE • ODESSA KOMER • MARC STEPP

November 22, 1976

Benjamin Hittleman, President
The Bristol Spring Manufacturing Company
123 Whiting Street
Plainville, Connecticut

Dear Mr. Hittleman:

On October 12, 1976 a letter was sent to you, from Anthony J. DeLorenzo, Director Region 9A UAW, requesting information necessary to prepare proposals for a Collective Bargaining Agreement between your Company and Local 1251 UAW.

To date, you have not responded. Therefore, I am requesting that you notify me as to dates that you will be available to begin negotiations.

Very truly yours,

Anthony Gerace

Anthony Gerace,
International Representative

AG:dam

opciu494

cc: Anthony J. DeLorenzo
Michael J. Vernovai
Edward Rollo

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

b.c. Shivers-Henry

Exhibit 13

93

No. 153072

RECEIPT FOR CERTIFIED MAIL—30¢ (plus post)

SENT TO		POSTMAN OR DATE
Benjamin Hittleman, Pres.		
STREET AND NO.		
Bristol Spring Mfg. Co.		
P.O., STATE AND ZIP CODE		
123 Whiting, Plainville, CT		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered	35¢
	With delivery to addressee only	85¢
DELIVERY TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form 3800 NO INSURANCE COVERAGE PROVIDED— (See other side)
 Apr. 1971 NOT FOR INTERNATIONAL MAIL *GPO: 1974 O-1

1. The following service is requested (check one). ☒ Show to whom and date delivered..... 15¢ ☐ Show to whom, date, & address of delivery.. 35¢ ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢ ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢		2. ARTICLE ADDRESSED TO: Benjamin Hittleman, President Bristol Spring Mfg. Co. 123 Whiting, Plainville, CT.	
3. ARTICLE DESCRIPTION: REGISTERED NO. 153072 INSURED NO.		4. DATE OF DELIVERY 11-23-76	
5. ADDRESS (Complete only if requested)		6. UNABLE TO DELIVER BECAUSE:	

PS Form 3811, Jan. 1975 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 77-4201
	)	
BRISTOL SPRING MANUFACTURING	)	
COMPANY,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the appendix in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

Thomas Cloherty, Esq.
Murtha, Cullina, Richter
& Pinney
101 Pearl Street, P. O. Box 3197
Hartford, Connecticut 06103

Int'l Union, United Automobile
Aerospace and Agricultural
Implement Wkrs. of America
UAW, Local 1251
Attn: Anthony Gerace, Int'l
Representative
46 Cooke Street
Waterbury, Connecticut 06702

Elliott Moore

Elliott Moore

Elliott Moore

Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 1st day of February, 1978.